ORIGINAL

DOCKET 0000057332

August 25, 2006

055

RECEIVED

2006 AUG 25 P 4:46

AZ CORP COMMISSION
DOCUMENT CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER
Chairman
WILLIAM A. MUNDEL
Commissioner
MARC SPITZER
Commissioner
MIKE GLEASON
Commissioner
KRISTIN K. MAYES
Commissioner

Arizona Corporation Commission
DOCKETED
AUG 25 2006
DOCKETED BY

IN THE MATTER OF QWEST CORPORATION'S APPLICATION FOR ARBITRATION PROCEDURE AND APPROVAL OF INTERCONNECTION AGREEMENTS WITH AZCOM PAGING,INC., HANDY PAGE, GLEN CANYON COMMUNICATIONS INC., AND TELE-PAGE,INC., AND PURSUANT TO SECTION 252(B) OF THE COMMUNICATIONS ACT OF 1932, AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996, AND THE APPLICABLE STATE LAWS.

DOCKET NO. T-01051B-06-0175
DOCKET NO. T-02556A-06-0175
DOCKET NO. T-03693A-06-0175

INTERSTATE WIRELESS, INC D/b/a HANDY PAGE'S OPENING BRIEF

Table of Contents

- Qwest's Inadequate, Dubious and Legally Questionable Responses to Handy Page's Data Request
- Conclusion

Summary

Interstate Wireless, Inc. d/b/a Handy Page ("Handy Page") herein submits this brief in accordance with the Arizona Corporation Commission's Procedural Order dated July 16, 2006 that questions whether Wide Area Calling ("WAC") should be subject to the terms and conditions of an Interconnection Agreement between Qwest, a local exchange carrier and Handy Page, a Commercial Mobile Radio Service ("CMRS") carrier.

Handy Page herein sets forth the reasons why WAC is a type of interconnection arrangement subject to the Federal Communications Commission's ("FCC") TSR Wireless[1] and T-Mobile Orders[2] and should be included in any proposed interconnection with Qwest. Additionally, WAC, as configured in the State of Arizona, is necessary for interconnection and is in the public interest. Handy Page also points out that there is no difference with respect to Qwest's costs for the provisioning of an NXX code(s) in either a single rate center (standard NXX code) or multiple rate centers (WAC NXX code) where the NXX code (standard or WAC) is used for IntraLATA-IntraMTA calling. Additionally, the provisioning requirements of an NXX code or number resources have no bearing or relationship to the rating of call traffic for calls dialed within an MTA for CMRS traffic and "local" calling with respect to the FCC's reciprocal compensation rules. Handy Page also explains herein why WAC per-minute-of-use charges with respect to Inter-MTA calling (but not Intra-MTA calling) should be included in any proposed interconnection agreement.

Background

Handy Page is an FCC licensed CMRS one-way paging carrier in the State of Arizona and currently connects with Qwest using what is generally described in the industry as Type 2 interconnection[3] to allow Qwest to terminate land-to-mobile call traffic on the network facilities of Handy Page. Handy Page does not originate any call traffic to Qwest.

Wide Area Calling ("WAC") is described in the Qwest Corporation Access Service Price Cap Tariff for Arizona, Page 1 as:

---

[1] See FCC 00-194, *TSR Wireless vs Qwest, et al.* Released June 21, 2000.
[2] See, *T- Mobile, etc. Petition for Declaratory Ruling FCC 05-42, released February 24, 2005.*
[3] Type 2 Interconnection is a trunk side connection with an LEC tandem switch rather than a Type 1 trunk side connection with an LEC end office switch.

> *Wide Area Calling Service is a billing service offered to Paging Service Carriers, in conjunction with their Type 2 Interconnection. Wide Area Calling Service provides direct dialed LATA-wide toll free calling for Qwest Corporation land to mobile (paging) calls. The Type 2 Interconnection provides for the completion of the land to mobile (paging) calls and for the billing of the calls to the Carrier rather than the calling party.*

Additionally, the Qwest Arizona Tariff requires under the stated Terms and Conditions:

> *1. The Carrier must subscribe to Type 2 Interconnection and must follow all of the configuration requirements of the Type 2 Interconnection.*
> *2. A dedicated NXX(s) is required for Wide Area Calling. The Carrier may have multiple Wide Area Calling NXXs in a LATA, but each NXX may only be used in one LATA. It is the Carrier's responsibility to obtain the dedicated NXX(s) from the North American Numbering Plan Administration (NANPA).*

The language used by Qwest supports its antiquated notion that it "sells" interconnected telephone service to fellow carriers. However, since the enactment of the 1996 Telecommunications Act, we note that carriers do not, and cannot, "subscribe" to Type 2 Interconnection, as required in the Qwest Arizona tariff, but instead "connect with" other carriers such as Qwest using Type 2 Interconnection. Obviously, and in accordance with well established law, CMRS carriers cannot be "subscribers" of Qwest or other Local Exchange Carriers ("LECs") but instead are "co-carriers".[4] Because Handy Page is a co-carrier and not a "subscriber" to Qwest services, the only possible arrangement in accordance with FCC rules and current law, which Qwest has requested *via* this proceeding[5], is an agreement pertaining to all of the terms and conditions of the

---

[4] See, FCC 96-325, paragraph 553, page 270, rel. August 8, 1996. *"New entrants will request interconnection pursuant to section 251(c)(2) for the purpose of exchanging traffic with incumbent LECs. In this situation, the incumbent and the new entrant are co-carriers and each gains value from the interconnection arrangement."*

[5] Qwest requested arbitration of the terms and conditions of an interconnection agreement under 47 C.F.R. 20.11(e). *"(e) An incumbent local exchange carrier may request interconnection from a commercial mobile radio service provider and invoke the negotiation and arbitration procedures contained in section 252 of the Act. A commercial mobile radio service provider receiving a request for interconnection must negotiate in good faith and must, if requested, submit to arbitration by the state commission. Once a request for interconnection is made, the interim transport and termination pricing described in Sec. 51.715 of this chapter shall apply."* Handy Page notes that 47 C.F.R. 20.11(e), under which Qwest made its request for arbitration at the Arizona Corporation Commission, is currently the subject of a timely filed Petition for Reconsideration filed with the FCC by the American Association of Paging Carriers on April 29, 2005. To date, the FCC has not acted on the AAPC Petition. (See, *In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs. PETITION FOR RECONSIDERATION,*

interconnection of the two carriers' networks including the provisioning of WAC NXX codes and the delivery of call traffic from the WAC NXX codes to Handy Page. Under current FCC rules, Qwest is prohibited from charging for Intra-MTA calls delivered to Handy Page, regardless of how the calls are characterized by Qwest or a state tariff.[6] We also note that the Qwest description of the WAC service states, "*[t]he Type 2 Interconnection provides for the completion of the land to mobile (paging) calls and for the billing of the calls to the Carrier rather than the calling party.*"[7] This statement is misleading at best since Type 2 Interconnection for land to mobile (paging) calls uses a Qwest facility used by Qwest to deliver traffic to the paging carrier. The Qwest Type 2 facility is used for termination of calls subject to reciprocal compensation and Qwest is prohibited by FCC rules[8] from billing the paging carrier for any Qwest originated Intra-MTA calls.

In essence, the WAC arrangement provisions a single NXX code in multiple rate centers, (rather than different NXX codes in multiple rate centers as is done with other CMRS carriers), within a single LATA to allow the "local" rating of calls that are terminated outside the "local" (landline) Qwest rate center where the call originated. The WAC arrangement has several advantages over the standard provisioning of NXX codes, for both Qwest and the terminating Paging Carriers. First, the WAC arrangement conserves scarce numbering resources and delays the need for area code relief measures such as area code splits or overlays. Second, the WAC arrangement allows the dialing of a single 7 digit number over a geographically wide calling area and has many advantages for businesses, government agencies, public safety and other paging users. Third, WAC achieves a form of rate center consolidation and all of the conveniences of local dialing for its subscribers, without the expense and inconvenience to Qwest of having to provision multiple Type 1 interconnection arrangements in each of its local exchange areas with Handy Page or other paging carriers.

WAC is In the Public Interest

WAC has been offered by Qwest for many years. Handy Page has provided WAC to a large number of its subscribers for many years. Based on these facts alone, it is obvious that WAC is a popular and needed service that is in the public interest. Ironically, Qwest technical repair services are a large user of Handy Page's WAC paging because of the

---

AMERICAN ASSOCIATION OF PAGING CARRIERS (AAPC), filed by its attorney, respectfully petitions the Federal Communications Commission for reconsideration in part, as hereinafter set forth, of its Declaratory Ruling and Report and Order in the captioned proceeding (the "Ruling"), FCC 05-42, adopted February 17, 2005, released February 24, 2005 and published at 70 Fed. Reg. 16141 (30 March 2005).)

[6] See 47 C.F.R. 20.11(d), "(d) Local exchange carriers may not impose compensation obligations for traffic not subject to access charges upon commercial mobile radio service providers pursuant to tariffs", and FCC 00-194, TSR Wireless v. Qwest, *et. al.* rel. June 21, 2000.

[7] See, Qwest Corporation, Access Service Price Cap Tariff for Arizona; Page 1, Wide Area Calling Service.

[8] See FCC 00-194, *TSR Wireless vs Qwest, et al.* Released June 21, 2000.

large geographic area of reliable coverage and the WAC access, especially in the rural areas of Arizona. WAC local telephone access allows Qwest to maintain contact with their emergency telephone repair technicians in areas where no other public radio telecommunications or cellular service is available.

Additionally, WAC is the only available local telephone access for the Handy Page system which, by unrelated circumstance, is the only paging system available to the State of Arizona, and emergency and public safety agencies in many rural areas of Arizona. If WAC were not available, many of the agencies and providers that supply critical medical care, emergency, fire, police and essential services in sparsely populated rural areas of Arizona would not be able to access the Handy Page system on a local calling basis. In many rural areas of Arizona, the Handy Page telecommunications system is the only reliable and inexpensive back-up communications system available to these essential service agencies.

WAC, as Configured in Arizona, is Necessary for Interconnection

Among the obligations assigned by the Telecommunications Act of 1996 to incumbent LECs is "[t]he duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the [LEC's] network . . . for the transmission and routing of telephone exchange service and exchange access."[9] In Arizona the Qwest WAC involves the "transmission and routing of telephone exchange service".[10]

In FCC 00-194, (*TSR Wireless v. Qwest, et al.*) ("TSR Wireless" or TSR Wireless Order") the FCC concluded that, in that instance, WAC was not necessary for TSR's Interconnection with Qwest and that Qwest was not required to offer WAC service.[11] However, the FCC's rationale for its conclusions and the conclusions themselves are neither comprehensive of the WAC in this case, nor are the FCC's conclusions definitive for the circumstances as they exist in the interconnection between Handy Page and Qwest.

In paragraphs 30-31 of TSR Wireless, the FCC describes a situation where a "toll" call is made by a Qwest subscriber to a paging carrier number. The FCC concludes that under a WAC arrangement, because the call is a "toll" call with respect to the landline local exchange areas involved, Qwest can bill the paging carrier "reverse billing" (another moniker for WAC) charges for carrying the call and delivering it to the paging carrier's network. This FCC conclusion is valid only if the caller dials a "toll" call and not a "local" call as is the case with calls sent to Handy Page by Qwest under the Qwest

[9] See the Telecommunications Act of 1996 251(c)(2)(A).
[10] See, Qwest Corporation, Access Service Price Cap Tariff for Arizona; Page 1, Wide Area Calling Service.
[11] See paragraphs 30-31, FCC 00-194, *TSR Wireless vs Qwest, et al,* released June 21, 2000.

Arizona WAC provisioning. By FCC definition, a call is rated as "toll" or "local" by comparing the NPA/NXX of the originating central office (the Qwest originating CO) and the CMRS provisioned rating location of the terminating (dialed number) NPA/NXX[12] (The call is rated according to the NPA/NXX comparison but is routed via the Qwest Type 2 connection to the Handy Page terminating Switch). It should be noted that abbreviated 7 digit dialing of calls is only used for local (not toll) calling in Qwest local exchanges in Arizona. Handy Page is not aware of any Qwest dialing plan in Arizona that allows toll calls to be dialed using only 7 digits. Instead, callers dialing "toll" calls in Arizona are required to dial 1+ 10 digits.

Under current Qwest interconnection templates and existing agreements, CMRS carriers (including one-way paging carriers) can have NPA/NXX codes provisioned in various rate centers in the Qwest operating areas to effect "local" calling (*i.e.,* 7 digit dialing) in those areas. Under those current Qwest interconnection agreements, and in conformance with FCC rules, Qwest delivers calls from the various locally rated NPA/NXX codes to the CMRS carrier's Point of Interconnection ("POI") and pays reciprocal compensation to the terminating CMRS carrier.[13] The only difference between the standard NPA/NXX provisioning described above, and the WAC NPA/NXX provisioning, is that a single WAC NPA/NXX is provisioned in more than one rate center. In essence, a WAC NXX code is provisioned as a "local" code in several rate centers instead of just one rate center. Although the WAC provisioning in multiple rate centers is not a standard NANPA provisioning option, WAC in effect provides an easy form of rate center consolidation that saves scarce numbering resources and allows convenient local dialing over a larger geographic area for selected NXX codes without the administrative hassles and provisioning problems associated with a general rate center consolidation.

Qwest has not shown in any of its statements, pleadings or answers to data requests in this proceeding that a WAC NPA/NXX has any costs or cost recovery parameters that are different from the standard NPA/NXX provisioning as configured for other CMRS carriers. Additionally, Qwest has also not shown any difference in the routing or transport costs between WAC or standard NPA/NXX calls. Most importantly, there is no "toll" cost recovery necessary with Intra-MTA WAC because the call would not be a

---

[12] See Paragraph 301, DA 02-1731, *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, et al.*, rel. 7/17/2002. "We agree with the petitioners that Verizon has offered no viable alternative to the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes."

[13] See the Qwest wireless Type 1 and Type 2 and Type 1 and Type 2 paging connection service templates for the State of Arizona (available at http://www.qwest.com/wholesale/clecs/wirelessagreements.html) and existing approved Interconnection Agreements with CMRS carriers in Arizona.

"toll" call under any reasonable or foreseen circumstance.[14] The FCC's TSR Wireless Order did not address this NXX provisioning detail and specifically did not address the situation where the calling party is dialing an NPA/NXX code that is provisioned as "local" in the same rate center as the calling party.[15] Thus, WAC, as configured in the State of Arizona, *is* necessary for interconnection, and the TSR Wireless Order does not apply in this instance.

Wide Area Calling Should Be a Provision of an Interconnection Agreement

The Telecommunications Act of 1996, Section 252(a)(1) provides that the binding agreement between the incumbent LEC and the requesting carrier must include a "*detailed schedule of itemized charges for interconnection and each service or network element included in the agreement.*"[16] Qwest has clearly negotiated interconnection agreements with other carriers that include more than simply the physical connections necessary to exchange call traffic.[17]

In addition, according to the Qwest Corporation Access Service Price Cap Tariff for Arizona,[18] CMRS carriers can "convert" a WAC NXX code to standard wireless (CMRS) NXX code, but would then be required[19] to have Qwest provision new Type 2 facilities to enable Qwest to deliver the "regular" call traffic, *"...in the case of a Wide Area Calling prefix (NXX code) being converted to a regular wireless prefix, (NXX code) without being relocated during the process."* Because this transition from WAC to standard NXX code provisioning also necessitates changes in the facilities required, it becomes apparent that WAC must be a provision/option in any interconnection agreement.

As noted above, Type 2 interconnection between Qwest and Handy Page is *required* by Qwest for the provisioning WAC. It is therefore both logical and reasonable that WAC

---

[14] As Handy Page has previously pointed out in this proceeding, in the absence of WAC, Handy Page would be required to provision many number blocks or standard NXX codes in numerous rate centers and request that Qwest provision numerous physical trunk facilities, to effect a partial duplication of the WAC local calling capability. This alternate provisioning would not cover many rural areas in Arizona that have essential and public safety requirements for local dialing to access the Handy Page system.

[15] The FCC example given in the TSR Wireless Order at paragraph 31 describes a Type 1 paging arrangement using a dedicated T-1 circuit to carry the "toll" traffic but does not address the situation where the call rating in terms of the NPA/NXX of the originating and terminating lines is at issue as is the case with Handy Page. The FCC does not mention how a "toll" call is dialed or rated by Qwest or an Interexchange carrier, in their example calling situation.

[16] 47 U.S.C. § 252(a)(1).

[17] See the Qwest wireless Type 1 and Type 2 and Type 1 and Type 2 paging connection service templates for the State of Arizona (available at http://www.qwest.com/wholesale/clecs/wirelessagreements.html) and existing approved Interconnection Agreements with CMRS carriers in Arizona.

[18] See, *Qwest Corporation, Access Service Price Cap Tariff for Arizona,* at Page 2; *Facilities for Wireless Carriers*, 16.3, Wide Area Calling Service, (B)(8).

[19] Assuming the WAC required Type 2A facility was the only current interconnection with Qwest.

would be included in any agreement for Interconnection with Qwest since WAC requires an essential and common type of connection between landline and CMRS telecommunications networks that is used by Qwest to deliver local call traffic for termination by Handy Page.

It should also be noted that Qwest has not made any claims that WAC traffic is not "local" CMRS traffic under the FCC's rules.[20] Instead, Qwest is apparently claiming (without any lawful basis) that WAC is only a "billing service" and therefore this "local" traffic (with respect to CMRS origination or termination; the call is "toll" only if the call does not originate or terminate on a CMRS network[21]) somehow does not fall under the FCC's reciprocal compensation rules.

Regardless of Qwest's WAC tariff requirements, WAC allows Qwest to deliver "local" call traffic to Handy Page that is subject to the FCC's explicit orders and rules pertaining to Qwest's traffic delivery obligations. Specifically, the WAC traffic is irrefutably subject to 47 C.F.R. §51.703, which states:

> *(a) Each LEC shall establish reciprocal compensation arrangements for transport and termination of local telecommunications traffic with any requesting telecommunications carrier.*
> *(b) A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.*

Qwest cannot avoid its clear and unambiguous obligations of §51.703(b) simply by referring to WAC as a "billing service". Allowing Qwest to circumvent this rule by its clever use of verbal gymnastics would frustrate the intent and purpose of the 1996 Act to create a level playing field among *all* telecommunications carriers.

In addition to Qwest's standard provisioning of an NXX code in a single rate center, Qwest should be required to offer Intra-LATA/Intra-MTA WAC as a provisioning option in an interconnection agreement that allows the WAC NXX code to be provisioned in multiple rate centers as a local code. This WAC designation would be used in conjunction with the current practice of using a designated billing rate center, (for purposes of rating Interexchange Carrier calls) with respect to North American Numbering Plan ("NANP") administration number assignments. Because of Local Number Portability ("LNP") and Number Pooling requirements involving the porting of individual numbers between carriers and the sharing of NXX code number blocks, the optional WAC provisioning would only apply to one-way paging carrier NXX codes that are not subject to the FCC's local number portability (LNP) or number pooling rules.

---

[20] See 47 C.F.R. 51.701(b)(2) and 47 C.F.R. 20.11(d). §20.11 states in part: "(d) Local exchange carriers may not impose compensation obligations for traffic not subject to access charges upon commercial mobile radio service providers pursuant to tariffs."
[21] See 47 C.F.R. 51.701(b)(2) and C.F.R. 20.11(d).

Simply because Qwest has chosen to make WAC calling part of its Arizona tariff does not in any way allow Qwest to circumvent the FCC's rules pertaining to call traffic exchange with paging carriers and its obligations to deliver all local Qwest originated call traffic to Handy Page without charge. The Qwest WAC tariff charges for the facilities used to deliver WAC traffic are a violation of the FCC's rules as noted above and should be eliminated from any proposed agreement or tariff.

Improper WAC Billing

The FCC's rules allow Qwest to charge for delivering "non-local" call traffic to Handy Page. The FCC defined the local calling area for CMRS, including paging carriers, as the Major Trading Area (MTA).[22] However, the only "non-local" WAC call traffic for a CMRS carrier such as Handy Page would be Intra-LATA, Inter-MTA call traffic. In the case at hand, according to the call data furnished to Handy Page by Qwest,[23] none of the call traffic delivered to Handy Page by Qwest is Inter-MTA.[24]

Qwest does not impose any charges for provisioning standard NXX codes in its proposed interconnection agreements with any CMRS or CLEC carrier, including in the Qwest proposed Type 1-Type 2 Paging Connection Service Agreement with Handy Page. Therefore, Qwest's charges for provisioning a WAC NXX code should be eliminated in any proposed agreement or tariff since Qwest has not shown that the provisioning of WAC NXX codes is any different or involves any added costs over the provisioning of standard NXX codes.

Qwest's WAC charges for Coin Telephones or Retail Public Access Lines ("PAL") are completely unjustified since calls originated from coin telephones are local calls no different from any other Qwest originated calls and such local coin calls are subject to the FCC's reciprocal compensation rules as noted above. Qwest has provided no compelling justification for its recurring charges to Handy Page for the privilege of receiving Coin Telephone calls. Further, Qwest has outright rejected Handy Page's request for Qwest to provide some proof of *any* Coin Telephone call activity reaching the network facilities of Handy Page over the WAC facilities. Therefore, all Qwest charges for Coin Telephone access are unjustified, unnecessary and unlawful, and should be eliminated.

Qwest's minutes of use pricing options for WAC "services" (Option 1 and Option 2; Section B(4) of the Arizona tariff) is both illogical and a violation of FCC rules. Even assuming Qwest's Arizona tariff as described above would, or could, be deemed lawful,

---

[22] § 51.701(b)(2).
[23] Monthly Qwest bills showing WAC usage charges.
[24] Handy Page suggests that Qwest could add WAC as an Access service in any proposed interconnection agreement that is specific only to Intra-LATA/Inter-MTA calls and/or those calls not subject to the FCC's local calling rules.

the charges associated with what Qwest describes as "local" call traffic in the tariff, (calls originated from inside the local calling area for the Wide Area Calling Service prefix, and within the same LATA) are clearly covered by 47 C.F.R. 51.703 and the FCC's reciprocal compensation rules as noted in the TSR Wireless Order, and cannot legally be contained within any state tariff.[25] Although Qwest has previously described WAC as a "billing service", it is clearly an Access tariff (note the name: Access Service Price Cap Tariff for Arizona) offering that does not conform to the Access rates charged other carriers for similar services involving the transport of Intra-LATA calls, thus constituting a clear violation of Qwest's non-discrimination obligations as a common carrier. Qwest has also made the erroneous assumption in this Proceeding that because WAC is listed in its state tariff as a "billing service", somehow Qwest is allowed to charge Handy Page for delivering "toll" traffic (which according to FCC rules is "local" traffic) at an exorbitant rate per minute, far greater than even the "retail" rates paid by low volume residential subscribers.

All Qwest WAC Arizona Tariff Charges for Intra-MTA Calls are Prohibited by FCC Rules

In the FCC's 2005 T-Mobile Order[26] the Commission revised its rules prohibiting the use of state tariffs for "imposing compensation obligations" on CMRS carriers.[27] This FCC Order, which became effective in March 2005, prohibits Qwest from billing Handy Page for Intra-MTA WAC calls under its Arizona tariff. Specifically, here is what the FCC wrote with respect to non-access CMRS traffic in the T-Mobile Order:[28]

"For the reasons discussed below, we deny the T-Mobile Petition, but amend the Commission's rules on a prospective basis to prohibit the use of tariffs to impose intercarrier compensation obligations with respect to non-access CMRS traffic".[6]*
[6 In this item, the term "non-access traffic" refers to traffic not subject to the interstate or intrastate access charge regimes, including traffic subject to section 251(b)(5) of the Act and ISP-bound traffic.]*

---

[25] See FCC 00-194, *TSR Wireless v. Qwest, et al.* rel. June 21, 2000.
[26] FCC 05-42, *In the Matter of Developing a Unified Intercarrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, CC Docket No. 01-92*, rel. February 24, 2005.
[27] § 20.11 (e) "Local exchange carriers may not impose compensation obligations for traffic not subject to access charges upon commercial mobile radio service providers pursuant to tariffs."
[28] Paragraph 1 and footnote 6, FCC 05-42, *In the Matter of Developing a Unified Intercarrier Compensation Regime T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, CC Docket No. 01-92*, rel. February 24, 2005.

Qwest has agreed that all WAC calls sent to Handy Page are Qwest originated Intra-LATA calls.[29] By current FCC rules, all of the WAC calls sent to Handy Page would therefore be subject to section 251(b)(5) of the Telecommunications Act of 1996 and would be "non-access traffic" for purposes of 47 C.F.R. §51.703(b)[30], regardless of whether the calls are considered toll calls by Qwest or a Qwest Arizona tariff. Under the circumstances as described above, Qwest is prohibited from charging Handy Page for any Intra-MTA WAC traffic.

Qwest's Inadequate, Dubious and Legally Questionable Responses to Handy Page's Data Request

Qwest's responses to Handy Page's Data Request included objection in one form or another to 30 out of 44 Handy Page Data Requests. Although Qwest is entitled to object to providing a response to a data request in those situations where there is a clear and unambiguous likelihood that the information sought is "*neither relevant to the subject matter of this arbitration nor reasonably calculated to lead to the discovery of admissible evidence*",[31] Qwest has apparently used this procedure to avoid answering a great majority of the Handy Page Data Requests. This questionable and unethical practice should be noted by the ACC in its deliberations on the merits of all of Qwest's responses and pleadings in this case.

The ACC should pay particular attention to Qwest's response to the Handy Page Data Request No: 021, which is wholly inadequate and a demonstration of the arrogance and contempt that Qwest has displayed in its dealings with Handy Page and the Arizona Corporation Commission in this proceeding. Quoted below is the entire response to the Handy Page Data Request No: 021:

"WAC billing services do not need to be addressed in the Qwest Type 1 and Type 2 Paging Service Connection Service Agreement for the legal reasons that will be stated in Qwest's Opening Brief."

Data Requests are required by Arizona Corporation Commission rules[32] and by the Handy Page Data Request itself[33] to be answered in a complete, truthful, timely and

---

[29] See Qwest response to Handy Page Data Requests No. 028 and No. 029 and *Qwest Corporation, Access Service Price Cap Tariff for Arizona*; Page 2; *Facilities for Wireless Carriers*, 16.3, Wide Area Calling Service.

[30] 47 C.F.R. §51.703(b) *"A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network."*

[31] Qwest wording in many of the Responses to the *INTERSTATE WIRELESS, INC D/b/a HANDY PAGE'S FIRST SET OF DATA REQUESTS TO QWEST CORPORATION* dated August 9, 2006.

[32] See, Arizona Corporation Commission, TITLE 14, PUBLIC SERVICE CORPORATIONS; CORPORATIONS; SECURITIES REGULATION CHAPTER 3. CORPORATION COMMISSION

comprehensive manner. Obviously if Qwest will be able to answer the Handy Page Data Request in "Qwest's Opening Brief", then it is deliberately and unethically withholding information that it is required to provide in the Data Request. Qwest is attempting to gain advantage over Handy Page by delaying its answer to the Handy Page Data Request until it files its Opening Brief. Additionally, Qwest did not explain why it would magically have the information requested in time for the Opening Brief, but does not now, or did not have at the time of preparation of the data request answers, the information reasonably requested by Handy Page, information which is clearly at the core of the instant proceeding. In essence, Qwest unilaterally decided it wanted to retain any response to the Handy Page request, without regard to the ACC or its obligations to Handy Page, until a time and place of its own choosing, and without regard to the rules of practice and procedure of the ACC.

Additionally, Qwest also appears to have provided false and misleading information in the Qwest response to Handy Page Data Request No. 039. In this Data Request, Qwest is asked if it receives any fee or usage charge related to a coin telephone for a local call originated on a Qwest coin telephone service. In response, Qwest states: "*Qwest does not owe the telephone company of "coin drop" calls any compensation for the local call. Qwest does not collect any fee or usage fee for "coin drop" calls.*" This easily researched Qwest response is obviously incorrect and misleading with respect to fees or usage fees for "coin drop" calls originated on the Qwest network. According to Qwest Wholesale,[34] the Qwest "*Retail Public Access Line (PAL) service is a fully finished end-to-end service tariff rated for use with pay telephone equipment provided to Customer Owned Coin Operated Telephone (COCOT) customers, Independent Payphone Providers (IPPs), and Payphone Service Providers (PSPs) for use with Customer-Owned Coin or Coinless FCC registered telephones in locations accessible to the general public. Retail PAL lines are provided as Two-Wire Voice Grade telephone service, Loop Start, Two-Way or One-Way Outgoing Only, Flat, Measured, or Message Rated, One-Party service, and Intrastate/IntraLATA service. PAL service provides access to the Local Switched Network, the Toll Network, 911 Emergency Service, Directory Assistance/Operator Services, 800/877/888 type services, 900/950/976 type services, and N11 Services (e.g., 411, 611).*"

In conjunction with the Qwest Wholesale services referenced above, Qwest lists usage charges per call and per minute for Public Access Line Service associated with Coin and Coinless telephone service in the Qwest Corporation Exchange and Network Services

---

RULES OF PRACTICE AND PROCEDURE Supp. F, ARTICLE 1.; RULES OF PRACTICE AND PROCEDURE BEFORE THE CORPORATION COMMISSION, R14-3-106.

[33] See *INTERSTATE WIRELESS, INC d/b/a HANDY PAGE'S FIRST SET OF DATA REQUESTS TO QWEST CORPORATION* dated August 9, 2006, at pages 1, 2 and 3.

[34] Qwest Wholesale Products and Services, Product Catalog (PCAT) (http://www.qwest.com/wholesale/pcat/retailpal.html)

Price Cap Tariff.[35] It is obvious that Qwest does collect a "usage fee" for coin-drop calls including coin telephone service providers and related businesses and that the Qwest response is not factual.

Handy Page requests that the ACC take particular note of Qwest's answers (and lack thereof) to the Handy Page Data Requests and issue appropriate sanctions to Qwest for its failure to respond to germane questions, failure to respond truthfully and completely to the Data Request, and its excessive use of objections to avoid providing information beneficial to Handy Page and the ACC's understanding of the issues involved herein.

Conclusion

For all of the foregoing reasons, Handy Page requests the following actions from the Arizona Corporation Commission based on the information presented in this brief, current law and FCC rules as noted above:

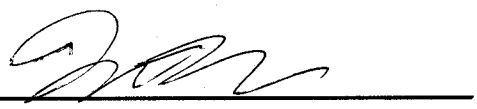
- Determine that Wide Area Calling (WAC) as configured by Qwest in Arizona is in the public interest and is necessary for interconnection.
- Require Qwest to include WAC provisioning of NXX codes as part of any proposed interconnection agreement that includes Intra-MTA traffic delivery obligations.
- Require Qwest to eliminate all coin telephone charges both recurring and non-recurring as well as non-recurring NXX provisioning charges for Intra-MTA WAC.
- Require Qwest to revise its Arizona tariff to delete Intra-LATA/Intra-MTA WAC charges of any kind in conformance with FCC rules and include only WAC per minute of use, cost based charges for WAC Intra-LATA/Inter-MTA Access calls in accord with Interexchange Access pricing standards.
- Require Qwest to refund/credit all WAC charges made to Handy Page for Intra-MTA calls, back to at least March of 2005, to comply with FCC rules.
- Sanction Qwest as appropriate for its failure to properly and lawfully respond to the Handy Page Data Requests.

[35] See, **QWEST CORPORATION EXCHANGE AND NETWORK SECTION 5 SERVICES PRICE CAP TARIFF** Page 141 **ARIZONA** Release 2 Issued: 10-7-03 Effective: 12-2-03 Per Decision No. 66597 **5. EXCHANGE SERVICES 5.5 PUBLIC COMMUNICATION SERVICE - COIN AND COINLESS 5.5.7 PUBLIC ACCESS LINE SERVICE** D. Rates and Charges (Cont'd) 5. Usage Rates **RATE PER MINUTE** • Measured Usage Rate $0.01 (R) **RATE PER CALL** • Message Usage Rate $0.03 (http://tariffs.qwest.com:8000/idc/groups/public/documents/tariff/htmltoc_az_e_pc.htm).

DATED this 25th day of August, 2006.

Interstate Wireless, Inc.

d/b/a Handy Page

By: 

Wayne Markis, President

Interstate Wireless, Inc.

841 West Fairmont Drive

Suite 5

Tempe, Az. 85282-3331

Telephone: (480) 350-9400

ORIGINAL and 13 copies hand-delivered
For filing this 25th day of August, 2006 to:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Az. 85007

Copies of the foregoing mailed/delivered
this 25th day of August, 2006 to:

Norman Curtwright
Qwest Corporation
20 East Thomas Road, 16th Floor
Phoenix, Az. 85012

Lyn Farmer
Chief Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Az. 85007

Christopher Kempley, Chief Counsel
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Az. 85007

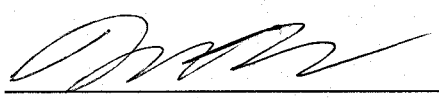
Ernest G. Johnson, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Az. 85007

Maureen A. Scott, Esq.
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Az. 85007

Michael L. Higgs, Jr.
Higgs Law Group, LLC.
1028 Brice Road
Rockville, MD. 20852-1201

Melody Markis
Wayne Markis
Interstate Wireless, Inc.
D/b/a Handy Page
841 West Fairmont Drive
Suite 5
Tempe, Az. 85282-3331

Arizona Reporting Service, Inc.
2627 North Third Street
Suite Three
Phoenix, Az. 85004-1104

By: 

Wayne Markis

Handy Page Opening Brief
REFERENCE DOCUMENTS

For Docket No. T-01051B-06-0175

FCC 96-325	**First Report and Order para. 553**	**8 August 1996**
FCC 00-194	**TSR Wireless vs U S WEST**	**21 June, 2000**
FCC 05-42	**T-Mobile Order**	**24 February, 2005**
DA 02-1731	**WorldCom Order para 301**	**17 July, 2002**

Comm Act of 1934 (amended 1996) Sections 251 and 252

47 CFR 20 Commercial Mobile Radio Services -Section 20.11

47 CFR 51 Interconnection Section 51.701

47 CFR 51 Interconnection Section 51.703

Qwest Arizona Exchanges and Network Services Price Cap Tariff
Para. 5.5 Public Communications Service – Coin and Coinless
Para 5.5.7 Public Access Line Service 2 December 2003

Qwest Arizona Access Service Price Cap Tariff
Para. 16 Facilities for Radio Carriers
Para. 16.3 WIDE AREA CALLING SERVICE 6 November 2003

limitation on our authority to require virtual collocation, competitive providers would be required to undertake costly and burdensome actions to convert back to physical collocation even if they were satisfied with existing virtual collocation arrangements. We conclude that Congress did not intend to impose such a burden on requesting carriers that wish to continue to use virtual collocation for purposes of section 251(c). Further, the record indicates that this requirement would be costly and would delay competition.[1342] In short, we conclude that, in enacting section 251(c)(6), Congress intended to expand the interconnection choices available to requesting carriers, not to restrict them.

552. We also conclude that requiring incumbent LECs to provide virtual collocation and other technically feasible methods of interconnection or access to unbundled elements is consistent with Congress's desire to facilitate entry into the local telephone market by competitive carriers. In certain circumstances, competitive carriers may find, for example, that virtual collocation is less costly or more efficient than physical collocation. We believe that this may be particularly true for small carriers which lack the the financial resources to physically collocate equipment in a large number of incumbent LEC premises.[1343] Moreover, since requesting carriers will bear the costs of other methods of interconnection or access, this approach will not impose an undue burden on the incumbent LECs.

553. Consistent with this view, other methods of technically feasible interconnection or access to incumbent LEC networks, such as meet point arrangements, in addition to virtual and physical collocation, must be available to new entrants upon request.[1344] Meet point arrangements (or mid-span meets), for example, are commonly used between neighboring LECs for the mutual exchange of traffic, and thus, in general, we believe such arrangements are technically feasible.[1345] Further, although the creation of meet point arrangements may require some build out of facilities by the incumbent LEC, we believe that such arrangements are within the scope of the obligations imposed by sections 251(c)(2) and 251(c)(3). In a meet point arrangement, the "point" of interconnection for purposes of sections

---

[1342] *See* Teleport comments at 32; ALTS comments at 23; Time Warner comments at 42-44 (objecting to non-recurring charges for the reconnection of existing interconnected virtual collocation services to a replacement physical collocation arrangement).

[1343] *See* Hyperion comments at 15.

[1344] *See* Teleport comments at 26-30; *see also* Washington Utilities and Transportation Commission, *Fourth Supplemental Order Rejecting Tariff Filings and Ordering Refiling*, Granting Complaints, in Part, (Washington Commission Oct. 31, 1995), Docket No. UT-941464, at 45; *Application of Electric Lightwave, Inc., MFS Intelnet of Oregon, Inc., and MCI Metro Access Transmission Services, Inc.*, Public Utility Commission of Oregon Order, Order No. 96-021, (Oregon Commission Jan. 12, 1996), at 68-69; *Rules for Telecommunications Interconnection and Unbundling*, Arizona Corporation Commission Order, Decision No. 59483, (Arizona Commission Jan. 11, 1996), Proposed Rule R14-2-1303 (Attachment E hereto).

[1345] The Michigan Commission recently required Ameritech to provide meet point interconnection. Michigan Public Service Commission, Case No. U-10860 (Michigan June 5, 1996) at 18 n.4.

251(c)(2) and 251(c)(3) remains on "the local exchange carrier's network"[1346] (*e.g.*, main distribution frame, trunk-side of the switch), and the limited build-out of facilities from that point may then constitute an accommodation of interconnection.[1347] In a meet point arrangement each party pays its portion of the costs to build out the facilities to the meet point. We believe that, although the Commission has authority to require incumbent LECs to provide meet point arrangements upon request, such an arrangement only makes sense for interconnection pursuant to section 251(c)(2) but not for unbundled access under section 251(c)(3). New entrants will request interconnection pursuant to section 251(c)(2) for the purpose of exchanging traffic with incumbent LECs. In this situation, the incumbent and the new entrant are co-carriers and each gains value from the interconnection arrangement. Under these circumstances, it is reasonable to require each party to bear a reasonable portion of the economic costs of the arrangement. In an access arrangement pursuant to section 251(c)(3), however, the interconnection point will be a part of the new entrant's network and will be used to carry traffic from one element in the new entrant's network to another. We conclude that in a section 251(c)(3) access situation, the new entrant should pay all of the economic costs of a meet point arrangement. Regarding the distance from an incumbent LEC's premises that an incumbent should be required to build out facilities for meet point arrangements, we believe that the parties and state commissions are in a better position than the Commission to determine the appropriate distance that would constitute the required reasonable accommodation of interconnection.

554. Finally, in accordance with our interpretation of the term "technically feasible," we conclude that, if a particular method of interconnection is currently employed between two networks, or has been used successfully in the past, a rebuttable presumption is created that such a method is technically feasible for substantially similar network architectures. Moreover, because the obligation of incumbent LECs to provide interconnection or access to unbundled elements by any technically feasible means arises from sections 251(c)(2) and 251(c)(3), we conclude that incumbent LECs bear the burden of demonstrating the technical infeasibility of a particular method of interconnection or access at any individual point.

[1346] 47 U.S.C. § 251(c)(2).

[1347] *See, supra* Section IV.E., above, discussing accommodation of interconnection.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of	)	
	)	
TSR WIRELESS, LLC, *et al.*,	)	
	)	
Complainants,	)	
	)	File Nos. E-98-13, E-98-15
v.	)	E-98-16, E-98-17, E-98-18
	)	
U S WEST COMMUNICATIONS, INC., *et al.*,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: May 31, 2000; Released June 21, 2000

By the Commission: Commissioner Furchtgott-Roth dissenting and issuing a statement; Commissioner Powell concurring and issuing a statement.

1. In this Order, we address five separate formal complaints filed by paging carriers TSR Wireless, LLC (TSR) and Metrocall, Inc. (Metrocall) (hereinafter "Complainants" or "paging carriers") against local exchange carriers (LECs) Pacific Bell Telephone Company (Pacific Bell), U S West Communications, Inc. (U S West), GTE Telephone Operations (GTE), and Southwestern Bell Telephone Company (SWBT) (collectively "Defendants"). The paging carriers allege that the LECs improperly imposed charges for facilities used to deliver LEC-originated traffic and for Direct Inward Dialing (DID) numbers in violation of sections 201(b) and 251(b)(5) of the Communications Act of 1934, as amended,[1] and the Commission's rules promulgated thereunder. We find that, pursuant to the Commission's rules and orders, LECs may not charge paging carriers for delivery of LEC-originated traffic. Consequently, Defendants may not impose upon Complainants charges for facilities used to deliver LEC-originated traffic to Complainants. In addition, we conclude that Defendants may not impose non-cost-based charges upon Complainants solely for the use of numbers. We further conclude that section 51.703(b) of the Commission's rules does not prohibit LECs from charging, in certain instances, for "wide area calling" or similar services where a terminating carrier agrees to compensate the LEC for toll charges that would otherwise have been paid by the originating carrier's customer. Accordingly,

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); 47 U.S.C. §§ 201(b), 251 (1991 & West Supp. 1999).

for the reasons set forth below, we grant in part and deny in part Complainants' claims. We note that the Complainants in this proceeding did not seek compensation for the transport and termination of LEC-originated traffic. Consequently, this order does not address the question of whether or under what circumstances paging carriers are entitled to such compensation.

I. BACKGROUND

2. Complainants are Commercial Mobile Radio Service (CMRS) carriers that provide telecommunications services, including one-way paging services. They assert that section 51.703(b) of the Commission's rules,[2] the Commission's *Local Competition Order*,[3] and Common Carrier Bureau letters[4] interpreting these provisions, prohibit incumbent LECs from charging paging carriers for telecommunications traffic that originates on a LEC's network.[5] Complainants seek an order prohibiting Defendants from charging for dedicated and shared transmission facilities used to deliver LEC-originated traffic, DID numbers, and "wide area calling service."[6] Defendants assert that the Commission lacks authority under the Act to adjudicate Complainants' claims.[7] They further argue that because the Complainants are one-way paging

---

2 47 C.F.R. § 51.703(b).

3 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition Order*), *aff'd in part and vacated in part sub nom., Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utilities Bd. v. FCC, 120 F.3d 753* (8th Cir. 1997), *aff'd in part and remanded, AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct 721 (1999); Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 97-295 (rel. Aug. 18, 1997), *further recons. pending.*

4 Letter from Regina M. Keeney, Chief, Common Carrier Bureau to Cathleen A. Massey, AT&T Wireless Services, Inc. (March 3, 1997) (Keeney Letter); Letter from A. Richard Metzger, Jr., Chief, Common Carrier Bureau to Keith Davis, Southwestern Bell Telephone, DA 97-2726 (Dec. 30, 1997) (Metzger Letter).

5 Metrocall, Inc.'s Brief on the Merits, at 5-6; Initial Brief of TSR Wireless LLC at 8-10, 14-15.

6 "Wide area calling," also known as "reverse billing" or "reverse toll," is a service in which a LEC agrees with an interconnector not to assess toll charges on calls from the LEC's end users to the interconnector's end users, in exchange for which the interconnector pays the LEC a per-minute fee to recover the LEC's toll carriage costs. *See, e.g.*, Letter from Gary A. Evenson, Assistant Administrator, Telecommunications Division, Wisconsin Public Service Commission, to James D. Schlichting, Chief, Competitive Pricing Division, Common Carrier Bureau, FCC, February 16, 1998.

7 Initial Brief of Defendants BellSouth, GTE, Pacific Bell, Southwestern Bell Telephone Company, and U S West, Sept. 11, 1998 (Metrocall Defendants' Brief) at 4-5. The Metrocall Defendants filed joint briefs and pleadings (Metrocall Defendants' Brief and Metrocall Defendants' Reply) to respond to Metrocall's allegations. Metrocall had also filed a complaint on January 20, 1998 against BellSouth Corporation and BellSouth Telecommunications, Inc. alleging the same causes of action as the instant matters (E-98-14). The BellSouth entities had participated in these proceedings until the Commission dismissed Metrocall's case against them on December 13, 1999.

carriers, they are not entitled to the benefit of the Commission's reciprocal compensation regime set forth in the Commission's rules, and therefore must pay for facilities used to deliver LEC-originated traffic.

3. In the *Local Competition Order*, the Commission promulgated section 51.703(b), which provides that: "A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network."[8] In adopting this rule, the Commission stated that "[a]s of the effective date of [the *Local Competition Order*], a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge."[9] The Order further provided that carriers operating under arrangements that do not comport with the Commission's mutual compensation principles "shall be entitled to convert such arrangements so that each carrier is only paying for the transport of traffic it originates, as of the effective date of [the *Local Competition Order*]."[10] When the *Local Competition Order* was appealed to the Eighth Circuit, the court specifically held that sections 2(b) and 332(c) of the Act granted the Commission authority to issue rules of special concern to CMRS providers. Consequently, the court permitted section 51.703 to remain in full force and effect as it applied to CMRS providers.[11] Defendants in this proceeding also participated in the appeal of the Eighth Circuit's holding to the Supreme Court, but did not seek review of the Commission's rules relating to CMRS carriers.

4. Section 251(b)(5) of the 1996 Act requires all LECs "to establish reciprocal compensation arrangements for the transport and termination of telecommunications."[12] The Commission in promulgating regulations to implement that section determined that CMRS providers such as paging carriers offer "telecommunications" as defined in the Act,[13] and that LECs therefore "are obligated, pursuant to section 251(b)(5) ... to enter into reciprocal compensation arrangements with all CMRS providers, including paging providers, for the transport and termination of traffic on each other's networks."[14] The Commission went on to

---

8 47 C.F.R. § 51.703(b).

9 *Local Competition Order*, 11 FCC Rcd at 16016.

10 *Local Competition Order*, 11 FCC Rcd at 16028. The Order took effect on November 1, 1996. The Commission's conclusions regarding reciprocal compensation were codified as Sections 51.701-17 of the Commission's rules. 47 C.F.R. §§ 51.701-17.

11 *Iowa Utils. Bd. v. FCC*, 120 F.3d at 800 n.21, 820 n.39.

12 47 U.S.C. § 251(b)(5).

13 *See* 47 U.S.C. § 153(43) (defining "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received").

14 *Local Competition Order*, 11 FCC Rcd at 15997.

state that because section 251(b)(5) "does not address charges payable to a carrier that originates traffic," section 251(b)(5) "prohibits charges such as those some incumbent LECs currently impose on CMRS carriers for LEC-originated traffic."[15]

5. On January 30, 1997, concerned that LECs would disconnect their interconnection service for failure to pay for LEC-originated traffic notwithstanding the FCC's regulations, several paging carriers requested that the Bureau "affirm" that section 51.703(b) of the Commission's rules prohibited LECs from charging CMRS providers, including paging providers, for local telecommunications traffic that originated on the LECs' networks.[16] On March 3, 1997, then-Chief of the Common Carrier Bureau Regina Keeney issued a letter responding to these carriers' concerns.[17] The Keeney Letter restated the Commission's conclusions from the *Local Competition Order*, and concluded that because the Act defines the term "telecommunications carrier" to include CMRS providers, "a LEC is prohibited by section 51.703(b) from assessing charges on CMRS providers for local telecommunications traffic that originates on the LEC's network."[18]

6. On December 30, 1997, A. Richard Metzger, Jr., then-Chief of the Common Carrier Bureau issued another letter in response to a request by several carriers for clarification of section 51.703(b) and the *Local Competition Order*.[19] The Metzger Letter stated that the Commission's rules do not allow a LEC to charge a provider of paging services for the cost of "LEC transmission facilities that are used on a dedicated basis to deliver to paging service providers local telecommunications traffic that originates on the LEC's network."[20] In January of 1998, Defendants SWBT, Pacific Bell, and U S West filed Applications for Review of the Metzger Letter.[21] Shortly before and soon after the release of the Metzger Letter, TSR and Metrocall filed the instant complaints seeking the cessation of unlawful conduction and recovery

---

15 *Local Competition Order*, 11 FCC Rcd at 16016.

16 Letter from Cathleen A. Massey, AT&T Wireless Services, Inc. to Regina M. Keeney, Chief, Common Carrier Bureau, January 30, 1997.

17 Keeney Letter, *supra* note 4.

18 *Id.* at 2.

19 Metzger Letter, *supra* note 4, at 2.

20 *Id.* at 3.

21 U S West bases its Application for Review on Section 1.115(b)(2)(i) of the Commission's rules, which requires applicants to demonstrate that the action taken pursuant to delegated authority "is in conflict with statute, regulation, case precedent, or established Commission policy." 47 C.F.R. § 1.115(b)(2)(i). U S West Application for Review, at 2, n.2. This Application for Review is pending at the time of this order. On January 30, 1998, SBC also filed a petition for stay of the Metzger Letter pending review of the letter by the Commission.

of the allegedly unlawful charges imposed by Defendants in violation of sections 201(b) and 251 of the Act and section 51.703(b) of the Commission's rules.

II. FACTS

A. TSR v. U S West

7. Complainant TSR provides CMRS one-way paging service to its subscribers in Arizona.[22] Defendant U S West is a LEC that provides facilities and services necessary for TSR to connect its CMRS one-way paging systems in Arizona to the public switched telecommunications network.[23] The parties agree that, because TSR currently provides exclusively one-way paging service in Arizona, no calls are conveyed from TSR's paging terminals to U S West's network.[24] A TSR subscriber therefore cannot originate a call to the U S West landline network over TSR's system.

8. U S West had billed and continues to bill TSR for the following types of charges under U S West's Arizona tariff, which TSR contests: 1) monthly recurring charges for DID numbers; 2) monthly recurring charges associated with dedicated Type 1 DID trunks; 3) charges for dedicated T-1 circuits necessary to connect U S West offices to the TSR network for delivery of LEC-originated traffic to TSR's network; 4) installation charges for DID numbers, DID trunks and T-1 circuits; and 5) usage charges described as "transport land to mobile and end office switching" associated with wide area calling service provided by U S West.[25]

9. Beginning in November, 1996, TSR refused to pay the contested charges imposed by U S West based on TSR's position that Commission regulations and decisions prohibit U S West's imposition of these charges against CMRS one-way paging carriers.[26] U S West also informed TSR on more than one occasion that it would "waive" charges for DID numbers retroactive to October 7, 1996, although to date, it has not done so.[27] On June 26, 1997, TSR submitted to U S West a letter requesting a T-1 circuit to handle TSR's Yuma, Arizona, to Flagstaff, Arizona, paging traffic (the Yuma-Flagstaff T-1).[28] The next day, U S West responded

22 TSR and U S West Joint Stipulation of Facts, June 2, 1998, at ¶ 1.

23 *Id.* at ¶ 2.

24 *Id.* at ¶ 5.

25 *Id.* at ¶ 6.

26 *Id.* at ¶ 8.

27 *Id.* at ¶ 10.

28 *Id.* at ¶ 11.

that it would not provide the Yuma-Flagstaff T-1 and that U S West had imposed a "Stop Provisioning Order" against TSR based on TSR's refusal to pay the contested charges, which amounted to $231,927.08 in TSR's May 1997 invoice.[29]

10. TSR filed its complaint with the Commission against U S West on December 24, 1997. TSR also filed a supplemental motion alleging that U S West violated the Commission's *ex parte* rules when representatives of U S West and Commission staff met without inviting TSR on May 26, 1999.[30]

B. Metrocall v. GTE, Pacific Bell, SWBT, and U S West

11. Shortly after the Commission's *Local Competition Order* took effect on November 1, 1996, Metrocall sent letters to Defendants GTE and Pacific Bell (along with SWBT and U S West hereinafter collectively "Metrocall Defendants") requesting that these carriers cease charging Metrocall for local transport, DID numbers, and facilities used for local transport based on its view that section 51.703(b) of the Commission's rules prohibited such charges.[31] Typical of these letters is Metrocall's November 19, 1996 letter to Jamie Miller of GTE Corporation. In that letter, Metrocall requests that GTE "immediately revise its paging interconnection terms and rates ... in light of Section 252(a) of the Telecommunications Act of 1996 ... and the [Commission's] rules and Orders."[32] The letter stated that "the FCC concluded that a 'LEC may not charge a CMRS provider or other carrier for terminating LEC-originated traffic,' and, as of the 'effective date' of that FCC Order (August 30, 1996), the LEC 'must provide that [LEC-originated] traffic to the CMRS provider or other carrier without charge."[33] The letter also referenced the Commission's conclusion in the *Local Competition Order* that "local" traffic includes CMRS-LEC traffic that originates and terminates within the same Major Trading Area ("MTA") pursuant to rule 51.701(b)(2), and language from the *Second Local Competition Order*[34] concerning nondiscriminatory access to numbers.[35] The letter concluded with a statement that, if GTE

---

29 *Id.* at ¶ 12.

30 TSR Motion to Impose Sanctions at 4-9.

31 *See* Letter from Frederick M. Joyce, Counsel to Metrocall, Inc. to GTE Corporation, Attention of Jamie Miller (Nov. 19, 1996), Metrocall Complaint Exh. 9 (Miller Letter); and Letter from Frederick M. Joyce, Counsel to Metrocall, Inc. to Pacific Bell Corporation, Attention of Robert Butland (Nov. 19, 1996), Metrocall Complaint Exh. 11.

32 Miller Letter at 1.

33 *Id.* at 1-2.

34 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order, 11 FCC Rcd 19392, 19538 (1996) (*Second Local Competition Order*).

35 Miller Letter at 2.

wished to continue assessing the charges, Metrocall "expect[ed] a written explanation, within 30 days of the date of this letter, as to how those charges would not be in violation of the Telecom Act and the FCC's rules."[36]

12. The Metrocall Defendants rejected Complainant's requests, averring that the Commission lacked jurisdiction to enforce section 51.703(b), and that, in any event, section 51.703(b) could only be applied by a state commission during the section 252 arbitration process.[37] Metrocall filed its complaints with the Commission on January 20, 1998.

III. DISCUSSION

A. Jurisdiction

13. As an initial matter, we reject Defendants' arguments that the Commission lacks jurisdiction to resolve the issues raised in these formal complaints.[38] Section 208 permits "any person ... complaining of anything done or omitted to be done by any common carrier subject to this Act, in contravention of the provisions thereof" to file a complaint with the Commission.[39] Defendants are common carriers. Complainants allege that Defendants have imposed certain charges upon them in violation of sections 201, and 251-252 of the Act and of the Commission's rules implementing those sections.[40] The Commission stated in the *Local Competition Order* that "[a]n aggrieved party could file a section 208 complaint with the Commission, alleging that the incumbent LEC or requesting carrier has failed to comply with the requirements of sections 251 and 252, including Commission rules thereunder ... ."[41] Therefore, our authority to decide the complaints arises from sections 201, 208, 251 and 252 of the Act.[42]

---

36 *Id.*

37 Metrocall Defendants Brief at 6-10, 22-23.

38 Metrocall Defendants' Brief at 4-5; U S West Brief at 6-9.

39 47 U.S.C. § 208.

40 47 U.S.C. §§ 201, 251-252; TSR Complaint at 18 ¶ 30 (§§ 201, 251-252 of the Act); Metrocall Brief at 2, 5 (§§ 201(b) & 251(b) of the Act).

41 *Local Competition Order* at 15564, ¶ 127. Defendants relied on the Eighth Circuit's opinion in *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), to argue that the Commission lacks jurisdiction to adjudicate this complaint. *See, e.g.*, Metrocall Defendants' Brief at 11-12. Because the Supreme Court vacated the Eighth Circuit's decision on that point on ripeness grounds in *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999), the Commission's jurisdictional decision in the *Local Competition Order* controls.

42 We note that section 1, 47 U.S.C. §151, also provides us with authority "to execute and enforce the

B. Res Judicata and Collateral Estoppel

14. Metrocall contends that the doctrines of res judicata and collateral estoppel prohibit Defendants from challenging Sections 51.701-17 of the Commission's rules in this proceeding.[43] Defendants counter that they may mount a challenge to the rules as applied to them in an enforcement proceeding pursuant to *Functional Music, Inc. v. FCC*,[44] and *Geller v. FCC*,[45] and that the Eighth Circuit Court of Appeals did not address the precise issues raised in this complaint proceeding.[46] In *Iowa Utils. Bd.*, the Eighth Circuit struck down the majority of the Commission's local competition rules on jurisdictional grounds, but upheld the rules at issue here as a valid exercise of the Commission's authority under section 332(c) of the Act.[47] Defendants herein filed comments in the *Local Competition* proceeding, and participated in the appeals of that order to the Eighth Circuit Court of Appeals and Supreme Court. TSR and Metrocall did not directly file comments in the *Local Competition* proceeding before the Commission, although Personal Communications Industry Association (PCIA), which represents the paging industry, did file comments.[48] The Court of Appeals considered the merits of section 51.703(b) and its application to paging carriers, and the Commission's other reciprocal compensation rules adopted by the *Local Competition Order*.[49] Defendants vigorously litigated the issue of the Commission's jurisdiction, but chose not to appeal the Court of Appeals' conclusions concerning reciprocal compensation for paging carriers.

15. Under the doctrine of res judicata, a judgment on the merits in a prior suit bars a

---

provisions" of the Act. An additional basis for authority for the action we take here exists under section 332 of the Act, 47 U.S.C. §332. *See supra* note 11.

43 Metrocall Brief at 4 n.4. Although it does not label its argument as res judicata or collateral estoppel, TSR makes a related argument that, because the Court of Appeals upheld the Commission's LEC-CMRS interconnection rules, the rules are binding upon Defendants and must be followed. TSR Brief at 17-18.

44 274 F.2d 543 (D.C. Cir. 1958).

45 610 F.2d 973 (D.C. Cir. 1979).

46 *See, e.g.*, Metrocall Defendants' Brief at 7 n.8.

47 *See Iowa Utils. Bd.*, 120 F.3d at 800 n.21, 820 n.39; *see also supra* note 11.

48 *Local Competition Order*, 11 FCC Rcd at 16185, 16189.

49 *See* Brief for Intervenors CMRS Providers in Support of Respondents, filed December 23, 1996, in No. 96-3321, *Iowa Utils. Bd. v. FCC*, at 4-6 (arguing in favor of validity of §§ 51.701(b), 51.703, 51.709(b), 51.711(a), 51.715(d), and 51.717 of the Commission's rules); *see also* Reply Brief of the Mid-sized Local Exchange Carriers, filed January 6, 1997, in No. 96-3321, *Iowa Utils. Bd. v. FCC*, at 34 (arguing against LEC-CMRS interconnection regime adopted in the *Local Competition Order*).

second suit involving the same parties or their privies based on the same cause of action.[50] Under the doctrine of collateral estoppel, a judgment in a prior suit precludes relitigation by the same parties of issues actually litigated and necessary to the outcome of the first action.[51] The record does not indicate whether TSR and Metrocall are PCIA members, and Complainants do not assert that they are "privies" of PCIA for purposes of res judicata. Although Complainants were neither parties nor privies to the *Local Competition Order* and its appeals, they may still estop the Defendants from challenging the validity of the Commission's rules by invoking the doctrine of collateral estoppel, as recognized by the Supreme Court in *Parklane Hosiery Co. v. Shore.*[52] *Parklane Hosiery Co.* provides courts with discretion to allow a non-party to a particular proceeding to prevent a party to that proceeding from re-litigating issues adversely decided against that party based primarily on fairness concerns.[53] Thus, once an issue is raised and determined, the doctrine of collateral estoppel precludes the entire issue, not just the particular arguments raised in support of it in the first case.[54] Accordingly, a litigant may not raise a new argument in a second proceeding regardless of whether it was made in the first proceeding; so long as the argument could have been made, it is precluded.[55] And, even when an opinion is silent on a particular issue, issue preclusion is applicable if resolution of that issue was necessary to the judgment.[56]

16. We find that it is fair for Complainants to invoke collateral estoppel against Defendants here, given that the Defendants were parties to the appeal of the *Local Competition Order* and possessed strong incentives to litigate these issues in that appeal.[57] In the *Local Competition Order* the Commission considered issues identical to those Defendants raise here: namely, whether CMRS carriers, and specifically, paging carriers should be included within the Commission's reciprocal compensation framework.[58] The Court of Appeals upheld the LEC-CMRS interconnection rules in a proceeding in which Defendants herein participated. Defendants

---

50 1B J. Moore, Federal Practice ¶ 0.405[1], pp. 622-24 (2d ed. 1974)(quoted in *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 327 (1979)).

51 *Id.*

52 439 U.S. 322 (1979).

53 *Parklane Hosiery Co. v. Shore*, 439 U.S. at 331.

54 *Yamaha Corp. v. U.S.*, 961 F.2d 245, 254 (D.C. Cir. 1992).

55 *See Securities Indus. Ass'n v. Board of Governors*, 900 F.2d 360, 364 (D.C. Cir. 1990).

56 *American Iron & Steel Ass'n v. EPA*, 886 F.2d 390, 397 (D.C. Cir. 1989).

57 *See Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800 n.21, 820 n.39 (8th Cir. 1997), *rev'd in part sub. nom. AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999); *see also supra* note 11.

58 *See Local Competition Order*, 11 FCC Rcd at 15993-16058.

possessed ample opportunity to argue to the Supreme Court that the Commission acted arbitrarily and capriciously in adopting these rules, but chose not to do so.[59] Accordingly, we find Defendants to be estopped from relitigating these issues that the Commission considered in the *Local Competition Order* and that were subsequently affirmed by the Eighth Circuit. This estoppel precludes Defendants from asserting that the Commission acted arbitrarily and capriciously in extending application of its reciprocal compensation rules to CMRS carriers, including paging carriers, and from challenging the decision to apply section 51.703(b) even in the absence of an interconnection agreement.[60] Moreover, under relevant precedent, the Eighth Circuit's judgement upholding the rules retains its preclusive effect even though the decision contains no detailed discussion of the merits of the rules.[61] The parties litigated the merits of the rules before this Commission[62] and, as the briefs submitted in that proceeding indicate, before the Eighth Circuit as well.[63] Defendants attempt to raise new arguments as to why the rules may be invalid, and the doctrine of collateral estoppel does not permit such tactics.[64] We conclude, however, that this estoppel does not bar Defendants from litigating issues that the *Local Competition Order* did not address, such as whether section 51.703(b) prohibits LECs from charging Complainants for wide area calling service, or for DID numbers.

17. We further find Defendants' reliance on *Functional Music* and *Geller* to be

---

[59] At the same time, Defendants retain the opportunity in the various petitions for reconsideration of the *Local Competition Order* and applications for review of the Metzger Letter to argue their position. The reconsideration petitions and applications for review of the Metzger Letter provide a forum for defendants to argue, for instance, that paging carriers should be excluded from the Commission's reciprocal compensation framework, or that they should not be considered to be telecommunications carriers. We expect to rule in these pending proceedings in the near future and our action here is without prejudice to action in such proceedings.

[60] The *Local Competition Order* made the Commission's reciprocal compensation policy requiring carriers to deliver LEC-originated traffic at no charge effective "as of the date of this [*Local Competition*] order." *See Local Competition Order*, 11 FCC Rcd at 16027-16028. The Order further provided that carriers operating under arrangements that do not comport with the Commission's mutual compensation principles "shall be entitled to convert such arrangements so that each carrier is only paying for the transport of traffic it originates, as of the effective date of this [*Local Competition Order*]." *Id.* at 16028. We therefore find that Defendants were on notice that the Commission intended that the rules should apply immediately, and that the rules could be invoked even before a carrier made a formal request for interconnection negotiations pursuant to §§ 251 and 252 of the Act.

[61] *Yamaha Corp.*, 961 F.2d at 254; *Securities Indus. Ass'n*, 900 F.2d at 364; *American Iron & Steel Ass'n*, 886 F.2d at 397.

[62] *See Local Competition Order*, 11 FCC Rcd at 16008-16058.

[63] *See* Brief for Intervenors CMRS Providers in Support of Respondents, filed December 23, 1996 at 22 (arguing that the Commission properly applied section 251(b)(5)'s reciprocity requirement to paging companies); *see also* Reply Brief of the Mid-Sized Incumbent Local Exchange Carriers, filed January 6, 1997 at 34 (arguing against symmetrical pricing for LEC-CMRS interconnection).

[64] *Securities Indus. Ass'n*, 900 F.2d at 364.

misplaced. *Functional Music* and *Geller* enable a party in an enforcement proceeding to file a challenge to an administrative rule after the limitations period for challenging the rule otherwise would have expired.[65] For instance, the rule of these decisions would permit a party that did not participate in the litigation concerning the validity of the rules before the Court of Appeals to challenge those rules in an enforcement proceeding, notwithstanding that the limitations period for challenging the *Local Competition Order* otherwise would have run. *Functional Music* and *Geller* do not, however, award a "second bite of the apple" to parties, such as Defendants that participated in the litigation but failed to raise these arguments in that appeal.[66] Consequently, we find that the Defendants' opportunity to challenge the validity of the Commission's rules at issue here has expired.

C. May Defendants charge one-way paging carriers for delivery of LEC-originated traffic to the paging carrier's point of interconnection?

18. The gravamen of many of the Defendants' arguments is that the reciprocal compensation regime established by section 51.703(b) and the Commission's other reciprocal compensation rules do not apply to the Complainants.[67] For the reasons stated below, we reject those arguments and find that the Commission's reciprocal compensation rules, including section 51.703(b), are applicable and that the Defendants cannot charge Complainants for the delivery of LEC-originated, intraMTA traffic to the paging carrier's point of interconnection.

1. Applicability of the Commission's Reciprocal Compensation Rules to One-Way Paging Carriers

19. The *Local Competition Order* provides that LECs must establish reciprocal compensation arrangements with paging carriers:

> Under section 251(b)(5), LECs have a duty to establish reciprocal compensation arrangements for the transport and termination of "telecommunications." Under section 3(43), "[t]he term 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." All CMRS providers offer telecommunications. Accordingly, LECs are obligated, pursuant to section 251(b)(5) ... to enter into reciprocal compensation arrangements with all CMRS

---

65 *See Functional Music*, 274 F.2d at 546; *see also Geller*, 610 F.2d at 978.

66 *See Public Citizen v. Nuclear Regulatory Commission*, 901 F.2d 147, 153 n.3 (D.C. Cir. 1990); *Western Coal Traffic League v. Interstate Commerce Commission*, 735 F.2d 1408, 1411 (D.C. Cir. 1984).

67 *See, e.g.*, Metrocall Defendants Brief at 18-23; U S West Brief at 13-16.

> providers, *including paging providers*, for the transport and termination of traffic on each other's networks, pursuant to the [Commission's rules governing reciprocal compensation.][68]

There is no ambiguity in the Commission's language concerning the applicability of section 251(b)(5) and the rules promulgated thereunder to paging carriers. As stated in the *Local Competition Order*, and re-stated in both the Keeney and Metzger letters, paging carriers, as carriers of "telecommunications," are entitled to the benefit of the Commission's reciprocal compensation rules,[69] including section 51.703(b) of the rules.[70]

20. Defendants make no effort to distinguish the *Local Competition Order*'s multiple, clear statements that the Commission intended to permit paging carriers to benefit from its reciprocal compensation framework. Instead, they argue that a conflict exists between the *Local Competition Order* and the rules that it adopted.[71] According to Defendants, section 51.701(e) of the Commission's rules, which contains the definition of reciprocal compensation, presupposes that both carriers receive compensation, and therefore, "by definition" a one-way carrier is not entitled to reciprocal compensation.[72] They further argue that the reciprocal compensation rules should not apply to one-way paging carriers because only one of the carriers, in this case, the paging carrier, receives termination compensation, and that section 51.701(e) must govern over any contrary language contained in the *Local Competition Order*.[73]

21. We disagree that any conflict exists here between the Order and the rules. Section 51.701(e) must be read in conjunction with the rest of the Order and section 51.703(a). Section 51.703(a) states that "[e]ach LEC shall establish reciprocal compensation arrangements for transport and termination of local telecommunications traffic with any requesting

---

68 *Local Competition Order*, 11 FCC Rcd at 15997 (emphasis supplied).

69 47 C.F.R. § 51.701, *et seq.*

70 Section 51.703(b) of the rules affords carriers the right not to pay for delivery of local traffic originated by the other carrier. However, Complainants are required to pay for "transiting traffic," that is, traffic that originates from a carrier other than the interconnecting LEC but nonetheless is carried over the LEC network to the paging carrier's network. *See Local Competition Order*, 11 FCC Rcd at 16016-17. In addition, the paging carrier would be responsible for paying charges for facilities ordered from the LEC to connect points on the paging carrier's side of the point of interconnection, such as facilities ordered to connect the paging terminal with its antennas.

71 *See* Metrocall Defendants' Brief at 22.

72 *Id.* at 19. Rule 51.701(e) provides that "a reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier."

73 Metrocall Defendants' Brief at 19, 21-22.

telecommunications carrier."[74] Like the text of the Order, which states that "paging carriers" shall be entitled to request reciprocal compensation arrangements, section 51.703(e) draws no distinction between one-way and two-way carriers. Indeed, section 51.703(a) specifically states that "*any* ... telecommunications carrier" may request a reciprocal compensation arrangement with a LEC.[75] As stated previously, paging carriers, including those that provide only one-way service, are "telecommunications carriers" under the Act. Absent a specific *exclusion* in the rules, there is no basis upon which to presume that such carriers should not be included within the scope of these provisions. Section 51.701(e) does not, as Defendants argue, require that compensation actually flow in both directions between carriers. It requires only that, to the extent that local telecommunications traffic originates on the network facilities of one carrier and terminates on the facilities of another, compensation shall be paid to the terminating carrier.[76] In fact, the Commission's regulation defining reciprocal compensation and its interpretation of those regulations was recently upheld in *Pacific Bell v. Cook Telecom, Inc.* [77] The Ninth Circuit concluded that the Commission's "interpretation of 'reciprocal' [was] a plausible and permissible interpretation of an ambiguous statutory term" and that our interpretation was entitled to deference.[78] Accordingly, we reject Defendants' arguments that section 51.703(b) of the Commission's rules does not apply to one-way carriers.

2. Whether one-way paging carriers "switch" traffic within the meaning of the Commission's rules

22. The *Local Competition Order* states that paging providers "transport," "switch," and "terminate" traffic.[79] Moreover, our rules do not require that a carrier possess a particular switching technology as a prerequisite for obtaining reciprocal compensation. Section 51.701(d) defines termination as "the switching of local telecommunications traffic at the terminating carrier's end office switch, *or equivalent facility,* and delivery of such traffic to the called party's premise."[80] By using the phrase "switch or equivalent facility," the rules contemplate that a

74 47 C.F.R. § 51.703(a).

75 *See* 47 C.F.R. § 51.703(a) (emphasis added).

76 Indeed, Defendants' argument, if adopted, would lead to the peculiar result that a carrier that delivered a single call to the incumbents' network would pay essentially nothing for the interconnection facilities (*i.e.*, where 99.9 percent of the traffic originates on the incumbent's network) while a carrier that does not deliver any calls to the incumbent's network would pay for the entire interconnection facilities.

77 197 F.3d 1236 (9th Cir. 1999).

78 *Id.* at 1245.

79 *See, e.g., Local Competition Order*, 11 FCC Rcd at 16043 ("[U]sing LEC costs for termination of voice calls thus may not be a reasonable proxy for paging costs as the types of switching and transport that paging carriers perform are different from those of LECs and other voice carriers.").

80 47 C.F.R. § 51.701(d) (emphasis supplied).

carrier may employ a switching mechanism other than a traditional LEC switch to terminate calls. A paging terminal performs a termination function because it receives calls that originate on the LEC's network and transmits the calls from its terminal to the pager of the called party. This is the equivalent of what an end office switch does when it transmits a call to the telephone of the called party. To perform this function, the terminal first directs the page to an appropriate transmitter in the paging network, and then that transmitter delivers the page to the recipient's paging unit. The terminal and the network thus perform routing or switching and termination. Because a paging terminal performs switching functions akin to an end office switch, we find unpersuasive Defendants' argument that a paging terminal does not qualify as a "switch or equivalent facility" as defined by the Commission's rules. Consequently, we reject Defendants' argument that Complainants fall outside of our reciprocal compensation framework because paging terminals allegedly do not perform a switching function, and, therefore, do not constitute a "switch or equivalent facility" as defined in the Commission's rules.

23. We similarly reject Defendants argument that paging carriers do not truly provide a call termination function because the paging terminal does not establish a direct communication path between the originating caller and the paging customer.[81] As authority for this proposition Defendants cite Newton's Telecom Dictionary, which defines switching as "[c]onnecting the calling party to the called party."[82] We find Defendants reliance on Newton's Telecom Dictionary's definition of switching to be misplaced. There is no requirement in the statute or the Commission's rules that a two-way communications path must be established in order for switching to occur. In fact, a number of packet switching protocols, including internet protocols, make use of "connectionless" switching.[83] With these protocols, a sender sends the network one or more packets with a destination address, and the network delivers one packet at a time to the destination. We conclude that there are two reasons why the Commission chose to include "equivalent facilit[ies]" in addition to switches in section 51.701(d)'s definition of termination. First, by including equivalent facilities as well as switches, the rule ensures that CMRS carriers that employ Mobile Transport and Switching Offices or paging terminals to perform functions

---

81 Metrocall Defendants' Brief at 20-21.

82 Metrocall Defendants' Brief at 20 (citing *Newton's Telecom Dictionary*, 578 (11th ed. 1996). Complainant TSR obtains both Type 1 and Type 2 interconnection from U S West. TSR Joint Stipulation of Facts at 4.

83 *Newton's Telecom Dictionary* defines "connectionless network" as:

> A type of communications network in which no logical connection (*i.e.*, no leased line or dialed-up channel) is required between sending and receiving stations. Each data unit ... is sent and addressed independently, and, thereby, is independently survivable ... . Connectionless networks are becoming more common in broadband city networks now increasingly offered by phone companies.

Newton's Telecom Dictionary, 178 (14th ed. 1998).

equivalent to end office switching will fall within the definition. The second is to ensure that the definition of termination will remain relevant as technology changes. To adopt Defendants' view would improperly exclude these networks from the Commission's reciprocal compensation framework based on the technology they employ to channel their traffic to their end users, in contravention of the Act's goals of promoting the development of new technologies and compensating network owners for traffic termination that does not originate on their network.

24. Finally, we reject Defendants' argument that carriers such as Complainants that employ Type 1 interconnection do not perform call termination functions and should therefore be excluded from our reciprocal compensation framework.[84] Citing the *Third Radio Common Carrier Order*, a pre-1996 Act case, Defendants argue that for Type 1 interconnection, the LEC switch actually "terminates" the call.[85] As Defendants point out, prior to enactment of the 1996 Act, the Commission described Type 1 as an interconnection option whereby the LEC switch performs, in the case of two-way communications, both call origination and termination functions. The same order describes Type 2 as the interconnection option where the CMRS provider owns the switch and provides call origination and termination functions. We find, however, that section 51.701(d)'s definition of termination is broad enough to encompass Type 1 interconnection. Simply put, for the LEC's customers' calls to reach the paging carrier's customers, more is required than mere delivery by the LEC of traffic to the paging terminal. For Type 1 interconnection, the paging terminal must still route these calls and distribute them over the paging carrier's network so that they reach the called party.[86] Because paging carriers receiving

---

[84] The Commission has previously described Type 1 and Type 2 interconnection as follows:

> Type 1 service involves interconnection to a telephone company end office similar to that provided to a private branch exchange (PBX). Under Type 1 interconnection, the telephone company owns the switch serving the [CMRS] network and, therefore, performs the origination and termination of both incoming and outgoing calls. Under Type 2, the [CMRS provider] owns the switch, enabling it to originate outgoing calls and to terminate incoming calls.

Third Radio Common Carrier Order, 4 FCC Rcd at 2372, n. 16. TSR currently obtains both Type 1 and Type 2 service from U S West. TSR and U S West Joint Statement of Uncontested Facts at ¶ 4.

[85] *In the Matter of The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services* (*Third Radio Common Carrier Order*), Memorandum Opinion and Order on Reconsideration, FCC 89-60, 4 FCC Rcd. 2369 (1989). *See* Metrocall Defendants' Brief at 21.

[86] A PBX trunk is a connection between and end user premise and the LEC switch. A Type 1 connection, in contrast, links the LEC to the Mobile Telephone Switching Office, or its equivalent facility, in this case the paging terminal, which is not an end user premise. *Bell Atlantic Telephone Companies*, 6 FCC Rcd 4794, 4795 (1991). Although Type 1 interconnection is somewhat analogous to that provided to a PBX, the paging carrier performs a significant switching function by broadcasting the call over its network to enable its customer to receive messages. In addition, as a carrier of "telecommunications," the paging carrier is responsible for obtaining necessary regulatory authorizations and building a network sufficient to serve its customers. In contrast, the PBX owner is an end user customer of the LEC who has purchased a PBX and, accordingly, would not be entitled to co-carrier status. *See id.* (noting that treating Type 1 connections like a PBX would not conform to the Commission's LEC-CMRS interconnection policies).

Type 1 interconnection carry calls from their "switch, or equivalent facility," and deliver them to the called party's premises, these carriers terminate calls within the meaning of section 51.701(d). This same rationale applies to paging carriers that utilize the more sophisticated Type 2 interconnection to interconnect with LEC networks, as such carriers also must route and distribute the LEC customer's calls to enable them to reach the called party.

3. Does section 51.703(b) contemplate a distinction between "traffic" and "facilities"?

25. Defendants argue that section 51.703(b) governs only the charges for "traffic" between carriers and does not prevent LECs from charging for the "facilities" used to transport that traffic.[87] We find that argument unpersuasive given the clear mandate of the *Local Competition Order*. The Metzger Letter correctly stated that the Commission's rules prohibit LECs from charging for facilities used to deliver LEC-originated traffic, in addition to prohibiting charges for the traffic itself. Since the traffic must be delivered over facilities, charging carriers for facilities used to deliver traffic results in those carriers paying for LEC-originated traffic and would be inconsistent with the rules. Moreover, the Order requires a carrier to pay for dedicated facilities only to the extent it uses those facilities to deliver traffic that it originates.[88] Indeed, the distinction urged by Defendants is nonsensical, because LECs could continue to charge carriers for the delivery of originating traffic by merely re-designating the "traffic" charges as "facilities" charges.[89] Such a result would be inconsistent with the language and intent of the Order and the Commission's rules.

26. Nor are we persuaded by the LEC arguments that the reference to "transmission facilities" in section 51.709(b) compels the conclusion that 51.703(b) is limited to "traffic charges."[90] Section 51.709(b) applies the general principle of section 51.703(b) – that a LEC may

---

87 Metrocall Defendants Brief at 17.

88 *Local Competition Order*, 11 FCC Rcd at 16027-28.

89 GTE argues that the Metzger Letter does not apply to it, asserting that the literal terms of that letter only prohibit charges for dedicated facilities. GTE states that it only uses shared facilities to deliver its traffic to Complainants. Metrocall Defendants Brief at 18. We reject this argument because section 51.703(b) prohibits charges for LEC-originated traffic, regardless of whether the facilities used to deliver such traffic are dedicated or shared.

90 *See, e.g.*, Metrocall Defendants' Brief at 17. Section 51.709(b) provides that:

> The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network. Such proportions may be measured during peak periods.

not impose on a paging carrier any costs the LEC incurs to deliver LEC-originated, intraMTA traffic, regardless of how the LEC chooses to characterize those costs – to the specific case of dedicated facilities. Thus, the promulgation of the more specific rule in section 51.709(b) supports, rather than undercuts, our conclusion regarding the effect of section 51.703(b).

4. Are Complainants entitled to the benefits of section 51.703(b) absent a section 252 interconnection agreement?

27. Defendants assert that, even if section 51.703(b) requires LECs to deliver LEC-originated traffic to complainants without charge, CMRS providers may only obtain that benefit by engaging in the section 252 agreement process. According to Defendants, Complainants possess two options when seeking to terminate LEC-originated traffic: they may either purchase service from Defendants' state tariffs and thereby forgo their rights under section 51.703(b) of the rules, or they may formally request interconnection under sections 251 and 252 and obtain those rights either through negotiation or arbitration. Defendants assert that, because Complainants did not make a formal request for interconnection negotiations under section 252, they are not entitled to the benefits available under section 251(b)(5) of the Act and section 51.703(b) of the Commission's rules.[91] The Defendants argue that the Act "does not authorize the Commission to impose the reciprocal compensation duties of section 251(b)(5) – one of the statutory bases for section 51.703(b) – outside the context of negotiations undertaken pursuant to the procedures established in section 252 of the Act."[92] They offer as support for this proposition the Eighth Circuit's decision, which they describe as holding that the "sole avenue for enforcement and review of the provisions of sections 251 and 252 is the negotiation and arbitration procedures established in section 252."[93] The Supreme Court, however, vacated the Eighth Circuit's decision limiting the Commission's section 208 authority by concluding that the issue was not ripe for adjudication. It also explicitly held that the Commission has "jurisdiction to make rules governing matters to which the 1996 Act applies."[94] Given Defendant's argument relies on a vacated holding, the Commission will afford it no weight. Rather, the Defendants' obligations in this matter are governed by the Commission's *Local Competition Order*.

28. The *Local Competition Order* states that, "*[a]s of the effective date of this order*, a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge."[95]

---

47 C.F.R. § 51.709(b).

91 Metrocall Defendants' Brief at 4.

92 Metrocall Defendants' Brief at 11.

93 *Id.* at 12.

94 *AT&T v. Iowa Utilities*, 119 S. Ct. at 730.

95 *See Local Competition Order*, 11 FCC Rcd at 16016 (emphasis supplied). The reference to "terminating

The Keeney and Metzger letters re-iterated this position.[96] Consequently, Defendants' argument that the benefits of section 51.703(b) of the Commission's rules are available only through a section 252 interconnection agreement process is incorrect.[97]

29. The Commission's *Local Competition Order* clearly calls for LECs immediately to cease charging CMRS providers for terminating LEC-originated traffic; the order does not require a section 252 agreement before imposing such an obligation on the LEC.[98] Defendants claim further that ceasing to charge for LEC-originated traffic would violate their pricing obligations under state tariffs by compelling them to provide certain state tariffed interconnection services free of charge. The *Local Competition Order* made clear, however, that as of the order's effective date, LECs had to provide LEC-originated traffic to CMRS carriers without charge.[99] Accordingly, any LEC efforts to continue charging CMRS or other carriers for delivery of such traffic would be unjust and unreasonable and violate the Commission's rules, regardless of whether the charges were contained in a federal or a state tariff. On its effective date, given the clear language of the *Local Competition Order*, Defendants should not have doubted their obligation to cease charging Complainants for the facilities at issue here, regardless of whether Complainants subsequently requested interconnection negotiations pursuant to sections 251 and 252 of the Act.

D. Does section 51.703(b)'s prohibition against charges for LEC-originated traffic prohibit LECs from charging paging carriers for wide area calling services?

30. TSR asserts that rule 51.703(b) prohibits U S West from charging for "wide area

---

LEC-originated traffic" refers to the fact that, among other things, LECs also had imposed charges on CMRS carriers for facilities used solely to deliver the LEC-originated traffic to the CMRS carrier's point of interconnection.

96 *See* Keeney Letter at 1-2 (citing *Local Competition Order*, ¶ 1042); Metzger Letter at 2 (same).

97 While not required to be addressed by this order, to the extent that other Commission rules promulgated under the *Local Competition Order* were not made "effective immediately," we would expect that requesting carriers would utilize the interconnection agreement process of sections 251 and 252 to obtain services under section 251. Moreover, it is clear that requesting carriers may negotiate and agree to terms other than those established by sections 251(b) and (c) and the Commission's implementing rules. *See* 47 U.S.C. § 252(a). In particular, requesting carriers, including CMRS carriers, may agree to forgo rights established by section 251 and the Commission's rules, for instance, in return for other consideration from the ILEC. Thus, we anticipate that the sections 251 and 252 interconnection agreement process will utilize the sections 251(b) and (c) obligations and the Commission's implementing rules as a starting point for negotiations and that requesting carriers may negotiate different terms through that process.

98 *See Local Competition Order*, 11 FCC Rcd at 16016.

99 *Id.*

calling" service.[100] We disagree. We find persuasive U S West's argument that "wide area calling" services are not necessary for interconnection or for the provision of TSR's service to its customers.[101] We conclude, therefore, that Section 51.703(b) does not compel a LEC to offer wide area calling or similar services without charge. Indeed, LECs are not obligated under our rules to provide such services at all; accordingly, it would seem incongruous for LECs who choose to offer these services not to be able to charge for them.

31. Section 51.703(b) concerns how carriers must compensate each other for the transport and termination of calls. It does not address the charges that carriers may impose upon their end users. Section 51.703(b), when read in conjunction with Section 51.701(b)(2),[102] requires LECs to deliver, without charge, traffic to CMRS providers anywhere within the MTA in which the call originated, with the exception of RBOCs, which are generally prohibited from delivering traffic across LATA boundaries.[103] MTAs typically are large areas that may encompass multiple LATAs, and often cross state boundaries. Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules.[104] Such traffic falls under our reciprocal compensation rules if carried by the incumbent LEC, and under our access charge rules if carried by an interexchange carrier.[105] This may result in the same call being viewed as a local call by the carriers and a toll call by the end-user. For example, to the extent the Yuma-Flagstaff T-1 is situated entirely within an MTA,[106] does not cross a LATA boundary, and is used solely to carry U S West-originated traffic, U S West must deliver the traffic to TSR's network without charge. However, nothing prevents U S West from charging its end users for toll calls completed over the Yuma-Flagstaff T-1.[107] Similarly, section 51.703(b) does not preclude TSR and U S West from entering into wide area calling or reverse billing arrangements whereby TSR can "buy down" the cost of such toll calls to make it appear to end users that they

---

100 TSR Brief at 10-11.

101 U S West Brief at 16.

102 Section 51.701(b)(2) defines "local telecommunications traffic" as "[t]elecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in §24.202(a) of this chapter." MTA service areas are based on the Rand McNally *1992 Commercial Atlas & Marketing Guide*, 123rd Edition, at pages 38-39, with several exceptions and additions set forth in Section §24.202(a). 47 C.F.R. §24.202(a).

103 *See* 47 C.F.R. § 51.703(b); *see also* 47 C.F.R. § 51.701(b)(2).

104 *See* 47 C.F.R. § 51.701(b)(2); *see also Local Competition Order*, 11 FCC Rcd at 16016-17.

105 *Local Competition Order*, 11 FCC Rcd at 16016-17.

106 *See* TSR Brief at 5.

107 We assume for the sake of this argument that a call from Yuma, Arizona to Flagstaff, Arizona would be billed as a toll call to the caller placing the call.

have made a local call rather than a toll call. Should paging providers and LECs decide to enter into wide area calling or reverse billing arrangements, nothing in the Commission's rules prohibits a LEC from charging the paging carrier for those services.[108]

E. DID Number and Code Opening Charges

32. Metrocall contends that section 51.703(b) prohibits Defendants from charging it for DID numbers.[109] TSR asserts that the *Second Local Competition Order*[110] and the *1986 Interconnection Order*[111] prohibit imposition of recurring charges for numbers or for central office (CO) "code opening."[112] In its reply brief in the TSR case, U S West asserts no controversy exists, as U S West has stated it would provide a credit to TSR for such charges, effective retroactively to October 7, 1996.[113]

33. The *1986 Interconnection Order* permits telephone companies to impose "a reasonable initial connection charge to compensate the costs of software and other changes associated with new numbers."[114] The order also provides, however, that telephone companies "may not impose recurring charges solely for the use of numbers."[115] The *Second Local Competition Order* "explicitly forbid[s] incumbent LECs from assessing unjust, discriminatory, or unreasonable charges for activating [central office] codes" and re-iterates that telephone companies may not impose recurring charges solely for the use of numbers.[116] Metrocall has submitted evidence purporting to show that Pacific Bell and GTE have imposed recurring charges solely for the use of numbers.[117] The Commission's previous orders make clear that such

---

108 U S West asserts that TSR's allegations extend to the provision of FX services. U S West Brief at 16. However, TSR's complaint does not refer to FX service and there is no indication in its pleadings that such service is encompassed by its complaint. Therefore, we need not address in this proceeding whether TSR or U S West must pay for such service.

109 Metrocall Brief at 4.

110 *Second Local Competition Order*, 11 FCC Rcd at 19538.

111 *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, Memorandum Opinion and Order, 59 RR2d 1275, 1284 (1986) (*1986 Interconnection Order*).

112 Code opening charges are charges imposed by a LEC for activating numbers associated with a particular a particular central office.

113 U S West Reply at 7-8.

114 *Id.*

115 *Id.*

116 *Second Local Competition Order*, 11 FCC Rcd at 19538.

recurring charges may not be assessed by incumbent LECs, and accordingly, Complainants are entitled to refunds of any recurring charges assessed solely for the use of numbers. U S West has agreed to refund its recurring DID number charges retroactive to October 7, 1996. If the parties are unable to agree upon the amount to which Complainants are entitled, we will consider this during the damages phase of this bifurcated proceeding.

F. Takings

34. According to Defendants, the *Local Competition Order*'s regulatory regime, which requires carriers to pay for facilities used to deliver their originating traffic to their co-carriers, represents a physical occupation of Defendants property without just compensation, in violation of the Takings Clause of the Constitution.[118] We disagree. The *Local Competition Order* requires a carrier to pay the cost of facilities used to deliver traffic originated by that carrier to the network of its co-carrier, who then terminates that traffic and bills the originating carrier for termination compensation. In essence, the originating carrier holds itself out as being capable of transmitting a telephone call to any end user, and is responsible for paying the cost of delivering the call to the network of the co-carrier who will then terminate the call. Under the Commission's regulations, the cost of the facilities used to deliver this traffic is the originating carrier's responsibility, because these facilities are part of the originating carrier's network. The originating carrier recovers the costs of these facilities through the rates it charges its own customers for making calls. This regime represents "rules of the road" under which all carriers operate, and which make it possible for one company's customer to call any other customer even if that customer is served by another telephone company.

35. The instant dispute arose because Defendants believe that Complainants, as one-way paging carriers, should not be entitled to the benefits of the Commission's reciprocal compensation regime. In sum, Complainants argue that Defendants seek to deny them status as telecommunications carriers, and instead to treat them as customers who must pay for the facilities that the LECs use to deliver LEC-originated traffic. Defendants basically argue that they should be permitted to charge Complainants for facilities that, since they are used solely to deliver Defendants' originating traffic, are part of Defendants' own network. Defendants possess other options for recovering these costs, such as recovering these costs from the end users that originates the calls. We disagree that prohibiting Defendants from charging Complainants for

---

[117] *See* Metrocall Complaint Exhibit 10, p. 2, GTE invoice for service from December 16, 1997 to January 16, 1998 ("direct-in-dial 20 numbers 125 at 10.00 ... $1250.00"). *See* Metrocall Complaint Exhibit 15, p. 1, Pacific Bell invoice ("'Paging Service Connection Arrangement 1st 100 numbers' for $ .41, 'add'l block of 100 #s' for $7.79").

[118] Metrocall Defendants Brief at 24 (citing *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982). In *Loretto* the Supreme Court struck down a New York law requiring landlords to permit cable television providers to install cable television wires on the landlords' property upon the payment of a modest fee. The court found the New York law constituted a taking because it caused a permanent, physical occupation of landlords' property without just compensation.

Defendants' portion of the network resembles in any way the physical occupation of property that the Supreme Court found violative of the Constitution in *Loretto*.

G. Sanctions

36. TSR seeks the imposition of fines and forfeitures upon U S West for its "willful and repeated violations of the Act and the Commission's Rules."[119] Metrocall requests the Commission determine the appropriate amount of "damages and sanctions" for the Metrocall Defendants' unreasonable, unjust and discriminatory practices in violation of the Communications Act and Commission rules and orders.[120] Section 208 of the Act provides for private remedies for individuals aggrieved by carriers, while section 503 gives the Commission the discretion to assess forfeitures. If the Commission determines that Defendants' violations warrant the issuance of a Notice of Apparent Liability for Forfeiture under section 503, the Commission will do so in a separate proceeding.[121] To the extent requested, we will address Complainant's request for punitive damages in the damages phase of this bifurcated proceeding.

H. TSR's *Ex Parte* Allegation

37. Under the Commission's *ex parte* rules, formal complaint proceedings are "restricted" proceedings, in which *ex parte* presentations to Commission decision-making personnel are prohibited.[122] However, because TSR's and Metrocall's formal complaints raised the issue of the applicability of reciprocal compensation to paging carriers, a matter that is also the subject of pending petitions for reconsideration filed in the *Local Competition* proceeding, the Common Carrier Bureau issued a public notice modifying the *ex parte* rules for this proceeding. The Bureau's *Public Notice* provided that presentations on policy questions concerning reciprocal compensation to paging carriers would be subject to the permit-but-disclose procedures under section 1.1206.[123]

---

119 TSR Complaint ¶ 32.

120 Metrocall Complaint pp. 13-14.

121 *See Halprin v. MCI Telecommunications Corp.*, 13 FCC Rcd. 22568, ¶ 31 (rel. Nov. 10, 1998); *see also* 47 U.S.C. §§ 208, 503((b); *see also* 47 C.F.R. § 1.80(e).

122 *See* 47 C.F.R. § 1.1208; *see also* 47 C.F.R. § 1.1202(a) (defining in relevant part a "presentation" as "[a] communication directed to the merits or outcome of a proceeding ... ."); 47 C.F.R. § 1.1202(b) (a written *ex parte* presentation is one that "is not served on the parties to the proceeding"; an oral *ex parte* presentation is one that is "made without advance notice to the parties and without opportunity for them to be present").

123 Public Notice, *Ex Parte* Procedures Established for Formal Complaints Filed by TSR Paging against U S West (File No. E-98-13) and by Metrocall, Inc. against Various LECs (File Nos. E-98-14-18), and for Petitions for Reconsideration of the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 13 FCC Rcd 2866 (1998) (*Public Notice*). Under the permit-but-disclose procedures, ex parte presentations to Commission decision-making personnel are permissible provided they are properly disclosed under section 1.1206.

38. TSR alleges that U S West violated the *ex parte* rules with respect to TSR's formal complaint proceeding in connection with a May 26, 1999 meeting and a September 27, 1999 meeting (to which it was not invited) between representatives of U S West and Commission staff.[124] Specifically, TSR claims that U S West made oral and written presentations to Commission staff that discussed "all aspects of LEC-paging interconnection – not just the issue of the 'applicability of reciprocal compensation to paging carriers[,]'" in violation of section 1.1208.[125] TSR also contends that U S West's June 1, 1999 letter notifying the Commission of the *ex parte* presentations concerning the May 26 meeting was filed late and failed to reference TSR's formal complaint proceeding.[126] U S West maintains that its *ex parte* presentations were permissible under the *ex parte* rules.[127]

39. We conclude that U S West's presentations concerning general paging interconnection issues raised in the *Local Competition* proceeding, as well as the specific issue of the applicability of reciprocal compensation to paging carriers were permissible.[128] As U S West observes, although the *Public Notice* expands the ability of the parties in the complaint proceedings to address the reciprocal compensation issue by making them subject to permit-but-disclose procedures, the *Public Notice* made no change in the rights of the parties to make presentations on all other issues within the scope of the rulemaking proceeding on a permit-but-

---

[124] TSR Motion to Impose Sanctions (filed July 7, 1999) at 4-9; TSR Second Motion to Impose Sanctions (filed Oct. 28, 1999) at 3-7. At the May 26 meeting were Jeffry A. Brueggeman and Kenneth T. Cartmell from U S West, and the following members of the Commission's staff: Jim Schlichting (Deputy Chief of the Wireless Telecommunications Bureau (WTB)), Nancy Boocker (Deputy Chief of the WTB's Policy Division), Jeanine Poltronieri (the WTB's Senior Counsel), and Peter Wolfe (Senior Attorney of the WTB's Policy Division). At the September 27 meeting were Mr. Brueggeman, Sheryl Fraser, and Melissa Newman from U S West, and the following members of the Commission's staff: Sarah Whitesell (Legal Advisor to Commissioner Gloria Tristani), Adam Krinsky (Acting Legal Advisor to Commissioner Tristani), and Rebecca Beynon (Legal Advisor to Commissioner Harold Furchtgott-Roth).

[125] TSR Motion to Impose Sanctions at 4 and TSR Second Motion to Impose Sanctions at 5. At the May 26 meeting, U S West provided the Commission with a written outline of its oral presentation and a "white paper" entitled "LEC/Paging Interconnection: The FCC's Role and Rules" and "Paging/LEC Interconnection: The FCC's Role and Rules", respectively. At the September 27 meeting, U S West provided the Commission with a written outline of its oral presentation and a white paper, both of which are entitled "LEC/Paging Interconnection: The FCC's Role and Rules". The white papers submitted in connection with the May 26 and September 27 meetings are substantively identical.

[126] Letter from Kenneth T. Cartmell, Esq., U S West, Inc., to Magalie Roman Salas, Secretary, FCC (dated and date-stamped June 1, 1999) (June 1, 1999 letter).

[127] Opposition of U S West Communications, Inc. to Motion to Impose Sanctions (filed July 14, 1999); Opposition of U S West Communications, Inc. to Second Motion to Impose Sanctions (filed Nov. 4, 1999).

[128] *See* U S West's written outline and "white paper" filed in connection with the May 26 and September 27 presentations.

disclose basis. We find, however, that U S West failed to disclose its May 26 presentation in accordance with the requirements of section 1.1206 for purposes of the *Local Competition* proceeding and the formal complaint proceedings.[129] U S West states that it was not obvious to it that it had to make disclosure of its May 26 presentation in the complaint proceedings, but that it has done so out of an abundance of caution. The *Public Notice*, however, clearly states that any presentation concerning the issue of reciprocal compensation to paging carriers should be disclosed in *both* the rulemaking proceeding and the complaint proceedings.[130] Moreover, U S West's *ex parte* submissions filed in connection with the May 26 presentation were not filed on a timely basis. Although U S West now asserts that it will provide timely *ex parte* notices in the complaint proceedings if it has further meetings with Commission staff regarding the rulemaking proceeding, U S West is admonished to exercise particular care to insure that all appropriate steps are indeed timely taken to comply with the provisions of our *ex parte* rules in the future. We note that U S West disclosed its September 27 presentation on a timely basis and in accordance with the requirements of section 1.1206 for purposes of the Local Competition proceeding and the formal complaint proceedings.[131] In light of this fact and our determination on this issue, it appears that no further action is warranted at this time with respect to TSR's *ex parte* contentions.

IV. CONCLUSION

40. Based on our analysis above, we conclude that: 1) Defendants may not impose upon Complainants charges for the facilities used to deliver LEC-originated traffic to Complainants; 2) Defendants may not impose non-cost-based charges upon Complainants solely for the use of numbers; 3) section 51.703(b) of the Commission's rules does not prohibit LECs from charging, in certain instances, for "wide area calling" or similar services where a terminating carrier agrees to compensate the LEC for toll charges that would otherwise have been paid by the originating carrier's customer; and 4) to the extent TSR's Yuma-Flagstaff T-1 is situated entirely within an MTA, defendant U S West must provide this facility at its own expense.

V. ORDERING CLAUSES

41. Accordingly, IT IS ORDERED, pursuant to §§ 1, 4(i), 201, 251, 252, and 332 of the

---

129 *See* June 1, 1999 letter (referencing the *Local Competition* proceeding) and June 23, 1999 letter from Kenneth T. Cartmell, Esq., U S West, Inc., to Magalie Roman Salas, Secretary, FCC (referencing TSR's and Metrocall's formal complaint proceedings). Under the permit-but-disclose rules, a person who makes an ex parte presentation should file a summary of the presentation one business day after the presentation. 47 C.F.R. § 1.1206(b).

130 *Public Notice* ("[i]f such a presentation is made in the *Local Competition Order* proceeding, the required disclosure of such presentation under section 1.1206 should be made in that rulemaking proceeding and both formal complaint proceedings").

131 *See* September 28, 1999 letter from Melissa Newman to Magalie Roman Salas, Secretary, FCC.

Act, 47 U.S.C. §§ 1, 4(i), 201, 251, 252, 332, that the formal complaints filed by complainant Metrocall, Inc. against defendants Pacific Bell, U S West, GTE, and SWBT ARE GRANTED IN PART and DENIED IN PART, as provided in this Order;

42. IT IS FURTHER ORDERED, pursuant to §§ 1, 4(i), 201, 251, 252, and 332 of the Act, 47 U.S.C. §§ 1, 4(i), 201, 251, 252, 332, that the formal complaint filed by complainant TSR defendant U S West IS GRANTED IN PART and DENIED IN PART, as provided in this Order;

44. IT IS FURTHER ORDERED, pursuant to § 1.722 of the Commission's rules, 47 C.F.R. § 1.722, that Complainants MAY FILE within 60 days any supplemental complaint for damages.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

In the Matters of TSR Wireless, LLC, *et al.*, Complainants, v. U S West Communications, Inc., *et al.*, Defendants

Dissenting Statement of Commissioner Harold W. Furchtgott-Roth

I dissent from this Memorandum Opinion and Order. I do so on the ground that the application and enforcement of regulations promulgated under section 251, absent the existence of any interconnection agreement, guts the reticulated procedures for the creation and review of such agreements in section 252. Accordingly, I would read section 51.703 of our rules to govern the conduct of local exchange carriers (LECs) only in the context of a negotiated and arbitrated interconnection agreement. I would not understand that regulation to impose a free-standing federal duty upon all LECs, as the majority does.

* * *

This case presents the question whether the statutory duties of section 251 apply generally to all LECs, even where the complaining party has not sought to secure the performance of those duties in an interconnection agreement as provided in section 252.[1] In light of the entire statutory scheme concerning interconnection established by the Telecommunications Act of 1996, I think the answer is no. Accordingly, the soundest construction of the instant regulation is that it does not apply outside the context of an approved interconnection agreement.

As I explained in a recent proceeding involving an application to provide long distance service, the statutory plan for interconnection agreements makes clear that

> not all section 252 contracts need comply with [section 251] in order to be valid under the Act. In particular, section 252 contracts may be voluntarily entered into "*without regard* to the standards set forth in subsections (b) and (c) of section 251," [47 U.S.C.] 252(a)(1), which impose the major substantive duties under the Act, such as resale, interconnection, unbundling, and collocation, on [LECs].

Concurring Statement of Commissioner Harold W. Furchtgott-Roth, *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295 (rel. Dec. 22, 1999) (emphasis added).

Similarly, if voluntary agreements approved pursuant to section 252 are exempt from the requirements of section 251, then so too must be entirely private arrangements such as traditional tariffed provisioning. For section 252 shows, as I have said, that "Congress clearly meant to allow noncompulsory agreements on interconnection, recognizing the advantages of allowing parties to contract around [federal] rules and tailor

---

[1] Here, there is no dispute that TRS takes service from US West exclusively out of Arizona tariffs, and that it has rejected the suggestions of US West to pursue interconnection agreements.

their contracts to individualized needs." *Id.*

Clearly, then, the duties of LECs under section 251 are not universal ones. They apply not to all such carriers, but only to those who are party to arbitrated and approved interconnection agreements. Conversely, section 251 does not automatically vest in all telecommunications carriers the full panoply of rights described therein, but guarantees carriers the ability to include those rights in interconnection agreements with LECs. Indeed, the language of section 251 specifically ties interconnection duties to the existence of statutory interconnection agreements: it refers to an incumbent LEC's "negotia[tion]. . . in accordance with section 252 [of] the particular terms and conditions of agreements to fulfill the duties described [in section 251(b) and (c)]." 47 U.S.C. section 251(c)(1).

But if interconnection can occur outside the requirements of section 251, as the foregoing statutory language indicates, then section 251(b)(5) and its implementing regulations *cannot* be self-effectuating. For if the regulations created free-standing federal duties on the part of all LECs, then those carriers would violate federal law every time they provided interconnection pursuant to contracts or any other commercial arrangements that fall short of section 251. That result, however, would contradict the provisions of the Act clearly establishing the ability of parties to contract for less than what section 251 might provide. [2]

Moreover, if section 251 regulations created LEC duties independent of the existence of any interconnection agreements, there would be little reason for telecommunications carriers ever to enter into an agreement with a LEC. Nor would there be any point in having State Commissions and federal courts review the agreements for compliance with section 251. *See* section 252(e). The telecommunications carriers would *already* – solely by operation of our regulations promulgated under section 251 – be entitled to everything that section 251 provides. No proper contract would be necessary to establish or enforce the rights made available by section 251. Thus, instead of going through negotiation, arbitration, and review under section 252, parties could sidestep that process by coming, as has TRS, directly to the Commission. Section 252 and its carefully delineated procedures for creation and approval of interconnection agreements would be drastically undermined, if not obliterated. Whether or not section 252's implementation plan is convenient, it is the plan that Congress adopted, and we should not disable that plan by creating a different one that bypasses it entirely. [3]

---

[2] Even the Commission Order adopting the regulations under section 251 implied that they have no such general effect. The Order declined to announce the unlawfulness of existing CMRS-LEC contracts that did not go to the outer limits of section 251; instead, the Order pointed out the availability of negotiation and arbitration procedures for future contracts as a means for securing section 251 guarantees. *See Local Interconnection Order*, 11 FCC Rcd 15499 at paras. 170, 1024 (1996).

[3] None of this is to say that the Commission lacked jurisdiction to adopt section 51.703(b) in the first place; clearly, the statute directed the Commission to make rules pursuant to section 251 to flesh out the meaning of the statutory duties. Rather, my argument is that the purpose of the regulation was to set out the rights available to telecom carriers in the arbitration process, not to create generally applicable duties for LECs regardless of the existence of an interconnection agreement.

Given the undisputed lack of an interconnection agreement between the parties, the ultimate effect of this Order is to preempt the Arizona tariffs pursuant to which TRS took its service from US West. I do not believe that Congress intended to require all state tariffs, which set the prices for customers generally, to comply with the minimum requirements of section 251. Rather, as described above, that section seems to have been enacted for the much more limited purpose of giving individual carriers the option of securing certain terms in contracts pursued according to section 252. As interpreted by the Commission, however, our section 251 regulations seem to set a federal floor to which all state tariffs must now arise.

* * *

In sum, the Commission's understanding of the scope of section 51.703(b) is inconsistent with the statutory scheme for the creation and enforcement of interconnection rights. Specifically, by creating a federal regulatory process that is wholly outside of, and apart from, the carefully defined plan of section 252, this Order makes that provision a redundant afterthought. In order to avoid undermining section 252 in this manner, we should read 51.703(b) to create rights in telecommunications carriers, as against LECs, that are enforceable in the context of a negotiated and arbitrated interconnection agreements. We should not understand it to create independent federal duties on the part of LECs absent any such agreement. Because I would not interpret the rule to operate outside the context an interconnection agreement, I see no duty to enforce it under section 208 in this case, where there is no such agreement. Accordingly, I would dismiss the instant complaint.

SEPARATE STATEMENT OF COMMISSIONER MICHAEL K. POWELL, CONCURRING

In the Matters of TSR Wireless, LLC, *et al.* v. U.S. WEST Communications, Inc., File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, *Memorandum Opinion and Order*

Although I support this enforcement action, I do so reluctantly. Section 51.703(b) of the Commission's rules is a current, enforceable rule, duly promulgated by the Commission and upheld in court. We have jurisdiction to enforce it and we should enforce it. However, I write separately to raise a concern that the Commission has set up, through this rule and ones like it, a scheme that tends to undermine the interconnection regime established by Congress in the Telecommunications Act of 1996. Our rules should be reexamined so that, in the future, all telecommunications carriers clearly understand their respective duties and obligations under the key interconnection provisions of the 1996 Act.

Specifically, under section 251(a) of the Communications Act, 47 U.S.C. § 251(a), interconnection is a duty of all telecommunications carriers, including paging carriers like the complainants in this case. Under section 251(b)(5), all local exchange carriers (LECs) have the duty to establish reciprocal compensation "arrangements" for transport and termination. These provisions are not by their terms simply discretionary or suggested conditions. Moreover, when dealing with incumbent local exchange carriers, like the defendants in this case, Congress imposed additional obligations, including the duty to negotiate in good faith interconnection terms and conditions in accordance with section 252 of the Communications Act. *See* 47 U.S.C. § 251(c)(1). Interestingly, the statute also places a duty on the requesting telecommunications carrier to negotiate in good faith the terms and conditions of interconnection agreements. Section 252 sets forth in some detail the negotiation process and the points in the process where negotiating carriers may request government intervention.

The rule we enforce by this Order allows certain telecommunications carriers to bypass this process. Section 51.703(b) was adopted "pursuant to section 251(b)(5)."[1] Undoubtedly, after *Iowa Utilities*, the Commission can establish rules to carry out the provisions of the Communications Act, including sections 251 and 252, at least for purposes of "guid[ing] the state-commission judgments."[2] In this case, LECs, by rule, were required to cease charging CMRS providers or other carriers for terminating LEC-originated traffic and must provide that traffic to CMRS providers or other carriers without charge. No negotiation or even a request to the LEC is necessary under the rule.

However, in their proper context, a better reading of section 251 and the negotiation provisions is that Congress wanted there to be a fair opportunity for parties, through negotiation, to work out the terms and conditions of their interconnection relationship in the market, rather than by regulatory mandate -- the section is entitled "Development of Competitive Markets." I

---

1 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 16016 (1996).

2 *AT&T Corp. v. Iowa Utilities Board*, 119 S.Ct. 721, 733 (1999).

see the specific duties in 251(b) and (c) as general backstops should negotiations fail. Indeed, the preference for the "market" is revealed by the fact that the contract can supercede any and all these obligations.[3]

Therefore, the quandary in my mind is that, if the Commission, over time, develops its own rules and regulations about interconnection, why should a party have to slog through the statutory process to get what it is entitled to under the rule? If the rule is favorable to a requesting party, why would it ever concede that term to an ILEC in negotiation and, thus, isn't the process a waste? I think the answer is that ILECs have a right under the statute to try to bargain away those duties by offering something of greater value to the requesting carrier. Moreover, it is entirely conceivable that a requestor would forgo some "regulatory rights" in exchange for other things. Thus, it is at least plausible that the terms of the rule would not ultimately prevail in negotiation. In light of this, while section 51.703 of our rules should be enforced, we should expeditiously reexamine its effects on the market-based negotiation process and, based on the interconnection negotiations that *have* taken place and other circumstances, determine whether or not it should be modified to fit better within the statutory scheme.[4]

As a related matter, the complainants in this case have invoked Section 208 to complain *to this Commission* that ILECs have, *inter alia*, violated sections 251 and 252, and the rules promulgated thereunder. While this item properly applies the enforcement policy embodied in the *Local Competition Order*, I am concerned this approach all but swallows the carefully crafted mechanisms for dispute resolution set forth in the 1996 Act. I would suggest that the issue of our authority under section 208 to enforce the general provisions of sections 251 and 252 are now ripe for judicial review.[5]

---

[3] *See* 47 U.S.C. 252(a)(1).

[4] I note that there are several long-pending reconsideration petitions and applications for review that address this and other reciprocal compensation rules. It would behoove us to act on these quickly.

[5] *See Iowa Utilities Bd. v. FCC,* 120 F.3d 753, 803 (8th Cir. 1997), *rev'd AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct 721, 733 (1999).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
T-Mobile *et al.* Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs	)	

DECLARATORY RULING AND REPORT AND ORDER

Adopted: February 17, 2005 **Released:** February 24, 2005

By the Commission:

I. INTRODUCTION

1. On September 6, 2002, T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications and Nextel Partners jointly filed a petition for declaratory ruling asking the Commission to reaffirm "that wireless termination tariffs are not a proper mechanism for establishing reciprocal compensation arrangements for the transport and termination of traffic."[1] The petitioners maintain that these tariffs are unlawful because they: (1) bypass the negotiation and arbitration procedures established in sections 251 and 252 of the Act;[2] (2) do not provide for reciprocal compensation to commercial mobile radio service (CMRS) providers;[3] and (3) contain rates that do not comport with the Total Element Long-Run Incremental Cost (TELRIC) pricing methodology as required by the Commission's rules.[4] The Commission incorporated the T-Mobile Petition into this proceeding and sought comment on the issues raised therein.[5] For the reasons discussed below, we deny the T-

[1] *See T-Mobile USA, Inc. et al. Petition for Declaratory Ruling: Lawfulness of Incumbent Local Exchange Carrier Wireless Termination Tariffs*, CC Docket Nos. 01-92, 95-185, 96-98, Petition of T-Mobile, *et al.* at 1 (filed Sept. 6, 2002) (T-Mobile Petition). Specifically, petitioners request that the Commission declare that the incumbent LEC wireless termination tariffs, as well as the refusal to negotiate interconnection agreements, conflict with sections 251 and 252 of the Act and the Commission's rules, and clarify that an incumbent local exchange carrier (LEC) engages in bad faith by unilaterally filing wireless termination tariffs without first negotiating in good faith with CMRS providers. *Id.* at 14.

[2] 47 U.S.C. §§ 251, 252.

[3] 47 C.F.R. §§ 51.701-17.

[4] *See* T-Mobile Petition at 5-6, 9-10. *See also* 47 C.F.R. § 51.705.

[5] *See Comment Sought on Petitions for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic*, CC Docket No. 01-92, Public Notice, 17 FCC Rcd 19046 (2002). Comments were filed on October 18, (continued....)

Mobile Petition, but amend the Commission's rules on a prospective basis to prohibit the use of tariffs to impose intercarrier compensation obligations with respect to non-access CMRS traffic.[6]

II. BACKGROUND

2. Prior to the 1996 Act, the Commission established rules governing LEC interconnection with CMRS providers.[7] Pursuant to its authority under section 201(a) of the Act, the Commission adopted rules requiring mutual compensation for the exchange of traffic between LECs and CMRS providers.[8] In particular, the rules required the originating carrier, whether LEC or CMRS provider, to pay reasonable compensation to the terminating carrier in connection with traffic that terminates on the latter's network facilities.[9] In a subsequent Notice of Proposed Rulemaking, the Commission explored whether it should retain the current system of negotiated agreements or adopt tariffing requirements.[10] The Commission issued another Notice of Proposed Rulemaking in 1996 to examine further its policies related to interconnection between CMRS providers and LECs, including compensation arrangements.[11] To date, the Commission has not issued a decision directly addressing these issues.

3. In the *Local Competition First Report and Order*, the Commission determined that section 251(b)(5) obligates LECs to establish reciprocal compensation arrangements for the exchange of intraMTA traffic between LECs and CMRS providers.[12] The Commission stated that traffic to or from a CMRS network that originates and terminates within the same Major Trading Area (MTA)[13] is subject to reciprocal compensation obligations under section 251(b)(5), rather than interstate or intrastate access

(Continued from previous page)
2002 and replies were filed on November 1, 2002. Comments and replies filed in response to this petition will be identified as "T-Mobile Comments" and "T-Mobile Reply," and are listed in Appendix C.

[6] In this item, the term "non-access traffic" refers to traffic not subject to the interstate or intrastate access charge regimes, including traffic subject to section 251(b)(5) of the Act and ISP-bound traffic.

[7] *See generally Implementation of Sections 3(n) and 332 of the Communications Act and Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411 (1994) (*CMRS Second Report and Order*) (subsequent history omitted).

[8] *See* 47 C.F.R. § 20.11.

[9] *CMRS Second Report and Order*, 9 FCC Rcd at 1498, para. 232 (adopting 47 C.F.R. § 20.11).

[10] *See Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, RM-8012, Notice of Proposed Rulemaking and Notice of Inquiry, 9 FCC Rcd 5408, 5455-57, paras. 113-20 (1994) (*CMRS 1994 Notice*).

[11] *See Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, and Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket Nos. 95-185, 94-54, Notice of Proposed Rulemaking, 11 FCC Rcd 5020, 5058-64, paras. 82-95 (1996) (*CMRS 1996 Notice*).

[12] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98 and 95-185, First Report and Order, 11 FCC Rcd 15499, 16016, para. 1041 (adopting section 51.703(a) of the Commission's rules) (*Local Competition First Report and Order*) (subsequent history omitted).

[13] The definition of an MTA can be found in section 24.202(a) of the Commission's rules. 47 C.F.R. § 24.202(a).

charges.[14] The Commission reasoned that, because wireless license territories are federally authorized and vary in size, the largest FCC-authorized wireless license territory, *i.e.*, the MTA, would be the most appropriate local service area for CMRS traffic for purposes of reciprocal compensation under section 251(b)(5).[15] Thus, section 51.701(b)(2) of the Commission's rules defines telecommunications traffic exchanged between a LEC and a CMRS provider that is subject to reciprocal compensation as traffic "that, at the beginning of the call, originates and terminates within the same Major Trading Area."[16]

4. Although section 251(b)(5) and the Commission's reciprocal compensation rules reference an "arrangement" between LECs and other telecommunications carriers, including CMRS providers, they do not explicitly address the type of arrangement necessary to trigger the payment of reciprocal compensation or the applicable compensation regime, if any, when carriers exchange traffic without making prior arrangements with each other.[17] As a result, carrier disputes exist as to whether and how reciprocal compensation payment obligations arise in the absence of an agreement or other arrangement between the originating and terminating carriers.[18]

5. In 2001, the Commission adopted the *Intercarrier Compensation NPRM* in this proceeding, which initiated a comprehensive review of interconnection compensation issues, including interconnection compensation arrangements between LECs and CMRS providers.[19] As the Commission recognized in the *Intercarrier Compensation NPRM*, CMRS providers typically interconnect indirectly with smaller LECs via a Bell Operating Company (BOC) tandem.[20] In this scenario, a CMRS provider delivers the call to a BOC tandem, which in turn delivers the call to the terminating LEC. The indirect nature of the interconnection enables the CMRS provider and LEC to exchange traffic even if there is no interconnection agreement or other compensation arrangement between the parties.[21] In the *Intercarrier Compensation NPRM*, the Commission asked commenters to address the appropriate regulatory framework governing interconnection, including compensation arrangements, between LECs and CMRS providers.[22] Specifically, the Commission requested comment on how interconnection between LECs and CMRS providers would "work" within the existing regulatory frameworks under sections 251 and

---

[14] *Local Competition First Report and Order*, 11 FCC Rcd at 16014, para. 1036.

[15] *Id.*

[16] 47 C.F.R. § 51.701(b)(2).

[17] 47 U.S.C. § 251(b)(5); 47 C.F.R. § 51.703(a).

[18] *See, e.g.,* T-Mobile Petition at 1 (asking the Commission to find that wireless termination tariffs are not a proper mechanism for establishing reciprocal compensation arrangements for transport and termination under the Act).

[19] *See generally Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9637-44, paras. 78-96 (2001) (*Intercarrier Compensation NPRM*). Pleadings filed in response to the *Intercarrier Compensation NPRM* are referred to simply as "Comments" and "Reply" respectively, and are listed in Appendix B.

[20] *See Intercarrier Compensation NPRM*, 16 FCC Rcd at 9643, para. 91 n.148. *See also* Nextel Comments at 10-11; Triton PCS Comments at 13; MSTG Reply at 2. *See also* T-Mobile Petition at 2.

[21] *See* Alliance of Incumbent Rural Independent Telephone and Independent Alliance Reply at 6-7; MITG Reply at 6; MSTG Reply at 7.

[22] *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9642, paras. 89-90.

252 and section 332 of the Act.[23]

6. The practice of exchanging traffic in the absence of an interconnection agreement or other compensation arrangement has led to numerous disputes between LECs and CMRS providers as to the applicable intercarrier compensation regime. For instance, many CMRS providers argue that intraMTA traffic routed from a CMRS provider through a BOC tandem to another LEC is subject to the reciprocal compensation regime because it originates and terminates in the same MTA.[24] Some LECs, however, contend that this traffic is more properly subject to access charges because it originates outside the local calling area of the LEC, is being carried by a toll provider, *i.e.*, the BOC, and is routed to the LEC via access facilities.[25] When a LEC seeks payment of access charges from a BOC in these circumstances, the BOC often refuses to pay such charges on the basis that (1) it is merely transiting traffic subject to reciprocal compensation, and (2) the originating carrier is responsible for the reciprocal compensation due.[26]

7. As a result of these disputes, the LECs have sought assistance from state commissions, requesting that they be compensated for terminating this traffic. Some LECs have asked state commissions to require the BOCs to continue paying for termination.[27] For instance, in Tennessee, a number of small LECs filed a petition asking the Tennessee Regulatory Authority to direct BellSouth to

---

[23] *Id.* at 9642, para. 89. The Commission discussed the merits and drawbacks of the negotiation process contained in sections 251 and 252 in the context of interconnection with CMRS providers. *Id.* at 9642, para. 89. The Commission also sought comment on how the various interconnection provisions of the Act should be applied to CMRS providers. *See id.* at 9641, para. 86.

[24] *See, e.g.*, ALLTEL Reply at 10; AT&T Wireless Reply at 27; CTIA Reply at 11; Nextel Reply at 2, 8; VoiceStream Reply at 33. Some CMRS providers view the status quo as an implicit bill-and-keep arrangement, because they are also uncompensated for incumbent LEC traffic that they terminate. *See, e.g.,* T-Mobile Petition at 3 & n. 8. Typically, small incumbent LECs route their traffic to CMRS providers via an interexchange carrier (IXC), and assert that the traffic is therefore inter-exchange toll traffic for which the terminating carrier receives access charges from the IXC, rather than reciprocal compensation. The Commission has established, however, that an IXC has no obligation to pay a CMRS provider access charges unless it has a contractual obligation to do so. *See Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, Declaratory Ruling, 17 FCC Rcd 13192, 13196, para. 8 (2002), *petitions for review dismissed, AT&T Corp. v. FCC*, 349 F.3d 692 (D.C. Cir. 2003). As a consequence, most traffic sent to CMRS providers from small incumbent LECs is terminated without compensation.

[25] *See, e.g.*, MECA Comments at 37.

[26] *See* Letter from Glenn Reynolds, Vice President, Federal Regulatory, BellSouth Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed May 16, 2003) (attaching Letter from Glenn Reynolds, Vice President, Federal Regulatory, BellSouth Corporation, to William Maher, Chief, Wireline Competition Bureau, Federal Communications Commission, CC Docket No. 01-92 at 1-2 (filed May 15, 2003) (stating that LECs are obligated to accept calls from carriers who have chosen to interconnect indirectly through a third party transiting company and must recognize that the compensation due them for local calls from other carriers is the responsibility of the originating carrier) (BellSouth May 16 *Ex Parte* Letter).

[27] *See* Letter from Elaine Critides, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at Attach. (filed Apr. 16, 2003) (attaching various state filings and cases addressing this issue) (Verizon Wireless April 16 *Ex Parte* Letter).

maintain all existing settlement arrangements and mechanisms currently in effect.[28] More recently, a LEC in Iowa threatened to block wireless originated traffic routed through a Qwest tandem unless Qwest agreed to pay the LEC tariffed access charges.[29] The state commission in Iowa granted injunctive relief preventing the LEC from blocking the traffic at issue.[30] Although settlements have been reached in some cases,[31] many of these disputes remain unresolved. As a result of these disputes, many LECs have filed wireless termination tariffs with state commissions in an attempt to be compensated for traffic that originates with CMRS providers.[32] Typically, these tariffs apply only in the situation where there is no interconnection agreement or reciprocal compensation arrangement between the parties.[33]

8. On September 6, 2002, T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications and Nextel Partners jointly filed a petition for declaratory ruling, which the Commission incorporated into this proceeding.[34] The petitioners and other CMRS providers claim that, by filing these tariffs, the incumbent LECs are acting in bad faith by attempting to preempt the negotiation process contemplated by the Act and the Commission's rules.[35] The incumbent LECs

[28] *See* Verizon Wireless April 16 *Ex Parte* Letter (attaching *General Docket Addressing Rural Universal Service*, Docket No. 00-00523, Petition for Emergency Relief and Request for Standstill Order By the Tennessee Rural Independent Coalition, at 1 (Tenn. Reg. Auth. Apr. 3, 2003)). Similar petitions were filed by LECs in Georgia, Mississippi, North Carolina, and Kentucky. *See* Verizon Wireless April 16 *Ex Parte* Letter, at Attach.

[29] *See Qwest Corp. v. East Buchanan Telephone Cooperative*, Docket No. FCU-04-42, Temporary Injunction, at 1-2, 4 (Iowa Dept. of Util. Bd. Aug. 13, 2004).

[30] *See Qwest Corp. v. East Buchanan Telephone Cooperative*, Docket Nos. FCU-04-42 and FCU-04-43, Order Granting Injunctive Relief, at 9 (Iowa Dept. of Util. Bd. Dec. 23, 2004)

[31] *See, e.g., Investigation of Duties and Obligations of Telecommunications Carriers with Respect to the Transport and Termination of CMRS Traffic*, Docket No. P-100, SUB 151, Order Granting Relief From Billing Obligations, at 1 (North Carolina Util. Comm. Dec. 12, 2003) (relieving BellSouth of its billing obligations due to settlements reached between the parties).

[32] *See, e.g.*, MITG Reply at 6; T-Mobile Petition at 4-5. Many state commissions allowed these tariffs to go into effect, while other state commissions initiated investigations into these tariffs seeking further justification of the rates and terms contained therein. *See* Letter from Laura S. Gallagher, Counsel to Nextel Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 2-3 (filed Dec. 10, 2003). *See also* Letter from Laura S. Gallagher, Counsel to Nextel Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at Attach. (filed Aug. 14, 2003) (attaching an amended *ex parte* with conflicting state decisions considering the lawfulness of wireless termination tariffs filed by CenturyTel).

[33] *See, e.g.*, Letter from Bryan T. McCartney, Counsel for the Missouri Small Telephone Company Group, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 3-4 (filed Aug. 17, 2004) (explaining that the wireless termination tariffs at issue in Missouri apply only in the absence of an agreement and are expressly subordinate to approved agreements under the Act) (MSTG Aug. 17 *Ex Parte* Letter).

[34] T-Mobile Petition at 1.

[35] *See, e.g.*, T-Mobile Petition at 8-9; AT&T Wireless T-Mobile Comments at 4-6; CTIA T-Mobile Comments at 4-5; Cingular Wireless T-Mobile Comments at 3-4; Verizon Wireless T-Mobile Comments at 2-3. *But see* Alliance of Incumbent Rural Independent Telephone Companies T-Mobile Comments at 5 (claiming that it is the CMRS providers that have elected to bypass the negotiation process by establishing indirect interconnection with incumbent LECs without any agreement to do so).

respond that, in the absence of an agreement or other arrangement, wireless termination tariffs are the only mechanism by which they can obtain compensation for terminating this traffic.[36] They claim that they are provided no meaningful opportunity to bargain and no technical ability to stop the flow of this incoming traffic.[37] Further, they emphasize that the establishment of these tariffs in no way precludes CMRS providers from exercising their right to pursue interconnection with them under the Act, and that such tariffs apply only in the absence of an agreement or other arrangement.[38]

III. DISCUSSION

9. In light of existing carrier disputes, we find it necessary to clarify the type of arrangements necessary to trigger payment obligations. Because the existing rules do not explicitly preclude tariffed compensation arrangements, we find that incumbent LECs were not prohibited from filing state termination tariffs and CMRS providers were obligated to accept the terms of applicable state tariffs. Going forward, however, we amend our rules to make clear our preference for contractual arrangements by prohibiting LECs from imposing compensation obligations for non-access CMRS traffic pursuant to tariff.[39] In addition, we amend our rules to clarify that an incumbent LEC may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act.

10. Our finding that tariffed arrangements were permitted under the existing rules is based on the fact that neither the Commission's reciprocal compensation rules, nor the section 20.11 mutual compensation rules adopted prior to the 1996 Act, specify the types of arrangements that trigger a compensation obligation. Because the existing compensation rules are silent as to the type of arrangement necessary to trigger payment obligations, we find that it would not have been unlawful for incumbent LECs to assess transport and termination charges based upon a state tariff.[40] Prior to the 1996

---

[36] *See, e.g.*, Frontier and Citizens T-Mobile Comments at 7; ICORE T-Mobile Comments at 7; Michigan Rural Incumbent Local Exchange Carriers T-Mobile Comments at 3; Minnesota Independent Coalition T-Mobile Comments at 1-2; NTCA T-Mobile Comments at 2-3; Rural Iowa Independent Telephone Association T-Mobile Comments at 6. The incumbent LECs dispute the existence of a *de facto* bill-and-keep arrangement. *See, e.g.*, Alliance of Incumbent Rural Independent Telephone Companies T-Mobile Comments at 10-12; Fred Williamson T-Mobile Comments at 2; Frontier and Citizens T-Mobile Comments at 5; Rural Iowa Independent Telephone Association T-Mobile Comments at 3.

[37] *See, e.g.*, Alliance of Incumbent Rural Independent Telephone Companies T-Mobile Comments at 12; Frontier and Citizens T-Mobile Comments at 7.

[38] *See, e.g.*, Alliance of Incumbent Rural Independent Telephone Companies T-Mobile Comments at 5-6, 8-9; Michigan Rural Incumbent Local Exchange Carriers T-Mobile Comments 4; Minnesota Independent Coalition T-Mobile Comments at 2; MITG T-Mobile Comments at 7-10; MSTG T-Mobile Comments at 2-3, 6. The CMRS providers respond that, once such tariffs are in effect, the incumbent LEC has little incentive to cooperate in good faith negotiations. *See, e.g.*, Cingular Wireless T-Mobile Comments at 6. The incumbent LECs counter with the fact that many CMRS providers reached agreements with LECs after the wireless termination tariffs were filed and argue that these tariffs provide an appropriate incentive to pursue negotiations *See* MSTG Aug. 17 *Ex Parte* Letter at 4.

[39] This new rule applies only to non-access traffic as defined in note 6 above.

[40] Although a tariffed arrangement would not be unlawful *per se* under the current rules, we make no findings regarding specific obligations of any customer of any carrier to pay any tariffed charges. A complaint requesting that we make such findings would not state a cause of action for which the Commission can grant relief. *See Illinois Bell Tel. Co. v. AT&T*, File Nos. E-89-41 through E-89-61, Order, 4 FCC Rcd 5268, 5270, para. 18 ("The complaints do (continued....)

Act, the Commission specifically declined to preempt state regulation of LEC intrastate interconnection rates applicable to CMRS providers[41] and it acknowledged that the intrastate portions of interconnection arrangements are sometimes filed in state tariffs.[42] Thus, it appears that the Commission was aware of these arrangements and explicitly declined to preempt them at that time.[43]

11. We reject arguments that our prior decisions require a different result. The petitioners state that, in 1987 and 1989, the Commission found that an incumbent LEC engages in bad faith when it files unilaterally a CMRS interconnection tariff, and they argue that the Commission should reaffirm that holding here.[44] We acknowledge that our early decisions addressing CMRS interconnection issues suggest that the Commission intended for these arrangements to be negotiated agreements between the parties and express an expectation that tariffs would be filed only after carriers have negotiated agreements.[45] These decisions, however, pre-date the reciprocal compensation rules adopted by the Commission pursuant to the 1996 Act. To the extent the Commission was concerned about the use of tariffs because there is unequal bargaining power between CMRS providers and LECs, the 1996 Act introduced a mechanism by which CMRS providers may compel LECs to enter into bilateral interconnection arrangements.[46] Thus, we do not find that these early decisions are dispositive as to what types of arrangements are necessary to trigger payment obligations under existing rules.[47]

(Continued from previous page)
not allege that AT&T, in its role as a carrier, acted or failed to act in contravention of the Communications Act . . . Rather, they allege conditionally that AT&T may have failed to pay the lawful charge for service. Such allegations do not state a cause of action under the complaint procedures and are properly dismissed."), *recon. denied*, 4 FCC Rcd 7759 at 7760, ¶ 4 (1989) ("BOCs may not bring a complaint against AT&T in its capacity as a customer.").

[41] In the *CMRS Second Report and Order*, the Commission preempted state and local regulations governing the kind of interconnection to which CMRS providers are entitled, but it specifically declined to preempt state regulation of LEC intrastate interconnection rates applicable to CMRS providers. *See CMRS Second Report and Order*, 9 FCC Rcd at 1498, para. 230-31. In the *CMRS 1996 Notice*, however, the Commission requested comment on the possibility of preemption of interconnection rates applied to LEC-CMRS traffic. *See CMRS 1996 Notice*, 11 FCC Rcd at 5072-73, paras. 111-12.

[42] *See CMRS 1994 Notice*, 9 FCC Rcd at 5451, 5453, paras. 104, 108.

[43] In 1996, however, the Commission did preempt state tariffs imposing charges on CMRS providers for LEC-originated traffic. *See Local Competition First Report and Order*, 11 FCC Rcd at 16016, para. 1042.

[44] T-Mobile Petition at 8.

[45] *See The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services,* Report No. CL-379, Declaratory Ruling, 2 FCC Rcd 2910, 2916, para. 56 (1987) (stating that "we expect that tariffs reflecting charges to cellular carriers will be filed only after the co-carriers have negotiated agreements on interconnection"); *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services (Cellular Interconnection Proceeding)*, Report No. CL-379, Memorandum Opinion and Order on Reconsideration, 4 FCC Rcd 2369, 2370-71, paras. 13-14 (1989).

[46] *See generally* 47 U.S.C. §§ 251-252; 47 C.F.R. Part 51. *See also Local Competition First Report and Order*, 11 FCC Rcd at 15574-75, para. 149 (describing how section 252 of the Act provides the incentive to negotiate in good faith).

[47] *See* Michigan Rural Incumbent Local Exchange Carriers T-Mobile Comments at 5; Minnesota Independent Coalition T-Mobile Comments at 3.

12. Although section 20.11 and the Commission's reciprocal compensation rules establish default rights to intercarrier compensation, they do not preclude carriers from accepting alternative compensation arrangements. By routing traffic to LECs in the absence of a request to establish reciprocal or mutual compensation, CMRS providers accept the terms of otherwise applicable state tariffs. These tariffs do not prevent CMRS providers from requesting reciprocal or mutual compensation at the rates required by the Commission's rules.[48] Accordingly, wireless termination tariffs do not violate a CMRS provider's rights to reciprocal or mutual compensation under section 251(b)(5) and section 20.11 of the Commission's rules.[49]

13. The CMRS providers argue that imposing the terms of interconnection pursuant to a tariff regime is inconsistent with the negotiation processes contained sections 251and 252 of the Act, and cite the Commission's finding in *Global NAPs*.[50] In *Global NAPs*, the Commission found that "[u]sing the tariff process to circumvent the section 251 and 252 processes cannot be allowed."[51] The Commission's finding in *Global NAPs* was premised, however, on the fact that the tariff at issue could supersede the terms of a valid interconnection agreement.[52] Because the wireless termination tariffs at issue here apply only in the absence of an agreement,[53] they have not been used to circumvent the processes contained in sections 251 and 252 of the Act.[54] Moreover, the Commission has determined that

[48]Section 20.11 of the Commission rules requires "reasonable compensation," 47 C.F.R. § 20.11, whereas reciprocal compensation rates are established by the state commissions based on forward-looking economic costs, 47 C.F.R. § 1.705.

[49]Because most wireless termination tariffs are effective only in the absence of a reciprocal compensation arrangement under section 251(b)(5), we need not decide whether such tariffs satisfy the statutory requirements of that section. *See* Letter from Cheryl A. Tritt, Counsel to T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, Attach. at 10-11 (filed July 9, 2004) (arguing that these tariffs do not satisfy a LEC's statutory duty to establish reciprocal compensation arrangements) (T-Mobile July 9 *Ex Parte* Letter).

[50]*See* Sprint T-Mobile Comments at 8-9; United States Cellular Corp. T-Mobile Comments at 3; Verizon Wireless T-Mobile Comments at 4.

[51]*See Bell Atlantic-Delaware, Inc., et al., v. Global NAPs, Inc.*, 15 FCC Rcd 12946, 12959, para 23 (1999) (*Global NAPs*), *recon. denied, Bell Atlantic-Delaware, Inc. v. Global NAPs, Inc.*, 15 FCC Rcd 5997 (2000); *Bell Atlantic-Delaware, Inc., v. Global NAPs, Inc.*, 15 FCC Rcd 20665 (2000) (*Global NAPs II*).

[52]The Commission found Global NAPs' tariff unlawful because, *inter alia*, it "purport[ed] to apply the [terms of the] tariff even when a valid interconnection agreement could be in place." *Id. See also Global NAPs II*, 15 FCC Rcd at 20671, para. 16 (stating that "[i]f a party to an interconnection proceeding could alter the outcome of the negotiation/mediation/arbitration processes set forth in sections 251 and 252 simply by filing a federal tariff, those processes could become significantly moot.").

[53]*See, e.g.*, Letter from Brian T. McCartney, Counsel for the Missouri Small Telephone Company Group, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 2-4 (filed Aug. 17, 2004) (stating that the wireless termination tariffs at issue in Missouri apply only in the absence of an agreement under the Act and are expressly subordinate to approved agreements under the Act).

[54]For similar reasons, the court decisions in *Wisconsin Bell v. Ave M. Bie* and *Verizon North v. John G. Strand* do not require that we reach a different conclusion under the existing rules. *Wisconsin Bell, Inc., d/b/a Ameritech Wisconsin v. Ave M Bie, et al. and WorldCom, Inc.*, 340 F.3d 441 (7th Cir. 2003); *Verizon North, Inc. v. John G. Strand*, 309 F.3d 935 (6th Cir. 2002). In *Wisconsin Bell v. Ave M. Bie*, the court was concerned that mandatory state tariffs inappropriately created a parallel process to the section 251/252 negotiation process. *Wisconsin Bell v. Ave* (continued....)

interconnection rates imposed via tariff may be permissible so long as the tariff does not supersede or negate the federal provisions under sections 251 and 252.[55] For all these reasons, we cannot conclude that a tariff filed by an incumbent LEC imposing termination charges on wireless traffic would be unlawful under the existing rules and, thus, we deny the petition for declaratory ruling filed by T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications and Nextel Partners.[56]

14. Although we deny the CMRS providers' requested ruling under the current rules, we now take action in this proceeding to amend our rules going forward in order to make clear our preference for contractual arrangements for non-access CMRS traffic. As discussed above, precedent suggests that the Commission intended for compensation arrangements to be negotiated agreements and we find that negotiated agreements between carriers are more consistent with the pro-competitive process and policies reflected in the 1996 Act. Accordingly, we amend section 20.11 of the Commission's rules to prohibit LECs from imposing compensation obligations for non-access traffic pursuant to tariff.[57] Therefore, such existing wireless termination tariffs shall no longer apply upon the effective date of these amendments to our rules. We take this action pursuant to our plenary authority under sections 201 and 332 of the Act, the latter of which states that "[u]pon reasonable request of any person providing

(Continued from previous page)
M. Bie, 340 F.3d at 443-44. Similarly, in *Verizon North v. John G. Strand,* the court rejected a state tariff requirement that bypassed and ignored the process for interconnection set out in the Act. *Verizon North v. John G. Strand*, 309 F.3d at 941-44. In this case, however, the wireless termination tariffs are a default mechanism that apply only if no other process is invoked. Moreover, the court's decision *Verizon North Inc. v. John G. Strand* is likewise distinguishable. *See Verizon North Inc. v. John G. Strand* 367 F.3d 577 (6th Cir. 2004). That case involved a tariff filing by a *competitive* carrier that could have initiated the section 252 process, but instead filed a tariff imposing reciprocal compensation charges. *Id.* at 579-83. Although competitors may compel negotiations under section 252, until now incumbent LECs did not have this same ability, as discussed below. Thus, absent these wireless termination tariffs, these carriers may have no other means by which to obtain compensation for terminating this traffic. *See Alma Tel. Co., et al. v. Public Service Commission of the State of Missouri*, 2004 WL 2216600, at *5 (Mo. Ct. App. Oct. 5, 2004) (finding that a group of rural companies had no alternative but to pursue tariff options because CMRS providers could not be compelled to negotiate compensation rates under the federal Act).

[55] *See Public Utility Commission of Texas, et al. Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, Memorandum Opinion and Order, 13 FCC Rcd 3460 (1997) (finding that a Texas state law establishing a default wholesale rate was consistent with sections 251 and 252 even though the rate was available to carriers without negotiation or arbitration and did not comply with the wholesale rate standard established in section 251 and federal rules because the state law did not interfere with the rights of carriers to seek more favorable rates under the section 251/252 process).

[56] Because we deny the T-Mobile Petition, we need not address the Motions to Dismiss alleging procedural deficiencies. *See, e.g.*, Montana Local Exchange Carriers T-Mobile Comments 3; NTCA T-Mobile Comments at 2. *See also Petition for Declaratory Ruling: Lawfulness of Incumbent Local Exchange Carrier Wireless Termination Tariff*, CC Docket No. 01-92, Montana Local Exchange Carriers Motion to Dismiss, at 2-3 (filed Oct. 18, 2002); *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Missouri Independent Telephone Company Group Motion to Dismiss, at 2-3 (filed Aug. 3, 2004). Rather, state tariffs are affected only prospectively under the rule change adopted pursuant to our rulemaking authority.

[57] As discussed below, we also adopt new rules permitting incumbent LECs to invoke the section 252 process and establish interim compensation arrangements, which are triggered by a request for negotiation from either carrier. For this reason, we reject claims that, in the absence of wireless termination tariffs, LECs would be denied compensation for terminating this traffic. *See, e.g.,* Nebraska Rural Independent Companies T-Mobile Comments at 6; NTCA T-Mobile Comments at 7-8; Rural ILEC T-Mobile Comments at 7-8. Under the amended rules, however, in the absence of a request for an interconnection agreement, no compensation is owed for termination.

commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service . . . ."[58]

15. We acknowledge that LECs may have had difficulty obtaining compensation from CMRS providers because LECs may not require CMRS providers to negotiate interconnection agreements or submit to arbitration under section 252 of the Act.[59] In the *Local Competition First Report and Order*, the Commission held that section 251(b)(5) requires LECs to enter into reciprocal compensation arrangements with all CMRS providers but that it does not explicitly impose reciprocal obligations on CMRS providers.[60] Thus, the Commission's rules impose certain obligations on LECs, but not on CMRS providers.[61] Moreover, some commenters observe that CMRS providers may lack incentives to engage in negotiations to establish reciprocal compensation arrangements.[62]

16. In light of our decision to prohibit the use of tariffs to impose termination charges on non-access traffic, we find it necessary to ensure that LECs have the ability to compel negotiations and arbitrations, as CMRS providers may do today. Accordingly, we amend section 20.11 of our rules to clarify that an incumbent LEC may request interconnection from a CMRS provider and invoke the

---

[58] 47 U.S.C. § 332(c)(1)(B). *See Local Competition First Report and Order*, 11 FCC Rcd at 16005, para. 1023 (affirming that "section 332 in tandem with section 201 is a basis for jurisdiction over LEC-CMRS interconnection"). In *Iowa Utils. Bd. v. FCC*, the United States Court of Appeals for the Eighth Circuit held that the Commission has authority to issue rules of special concern to CMRS providers. *See Iowa Utils. Bd. v. FCC,* 120 F.3d 753, 800 n.21 (8th Cir. 1997) (vacating the Commission's pricing rules for lack of jurisdiction except for "the rules of special concern to CMRS providers" based in part upon the authority granted to the Commission in 47 U.S.C. § 332(c)(1)(B)), *vacated and remanded in part on other grounds, AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). *See also Qwest v. FCC*, 252 F.3d 462, 465-66 (D.C. Cir. 2001) (describing the Eighth Circuit's analysis of section 332(c)(1)(B) in *Iowa Utils. Bd. v. FCC* and concluding that an attempt to relitigate the issue was barred by the doctrine of issue preclusion).

[59] *See* Ronan/Hot Springs Comments at 13; MSTG Reply at 6-7, 10, 12. *See also* TCA Reply at 4-5 (contending that CMRS providers do not want interconnection agreements with small LECs).

[60] *Local Competition First Report and Order*, 11 FCC Rcd at 15996-97, paras. 1005, 1008 (holding that CMRS providers will not be classified as LECs and are not subject to the obligations in section 251(b)(5)). *Compare id.* at 16018, para. 1045 (suggesting that CMRS providers will enter into reciprocal compensation arrangements).

[61] 47 C.F.R. § 51.703(a). There is some uncertainty as to the relationship between the arrangements contemplated in section 20.11 and the section 251/252 agreements contained in the Act. Therefore, the rights of LECs to compel negotiations with CMRS providers are not entirely clear. *Compare* Letter from Brian T. McCartney, counsel for the Missouri Small Telephone Company Group, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 13 (filed Aug. 17, 2004) (stating that the rights of rural incumbent LECs to compel negotiations are not clear) *with* T-Mobile July 9 *Ex Parte* Letter, Attach. at 7, 9, 13 (arguing that LECs can require CMRS providers to negotiate interconnection under sections 201 and 332 of the Act). Further, although CMRS providers may indeed have an existing legal obligation to compensate LECs for the termination of wireless traffic under section 20.11(b)(2) (*see* Letter from Michael F. Altschul, Senior Vice President and General Counsel, CTIA, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 1 n.3, 4 (filed Nov. 30, 2004)), the rules fail to specify the mechanism by which LECs may obtain this compensation.

[62] *See, e.g.,* MSTG Reply at 12, 25; OPASTCO Reply at 4-5. *See also* Frontier and Citizens T-Mobile Comments at 5 (noting that, because CMRS providers are generally net payers of reciprocal compensation, it is in their financial interest to maintain the *status quo* of bill-and-keep).

negotiation and arbitration procedures set forth in section 252 of the Act.[63] A CMRS provider receiving such a request must negotiate in good faith and must, if requested, submit to arbitration by the state commission. In recognition that the establishment of interconnection arrangements may take more than 160 days,[64] we also establish interim compensation requirements under section 20.11 consistent with those already provided in section 51.715 of the Commission's rules.[65] Interim compensation requirements are necessary for all the reasons the Commission articulated in *Local Competition First Report and Order*.[66]

IV. PROCEDURAL MATTERS

A. Regulatory Flexibility Analysis

17. A Final Regulatory Flexibility Analysis has been prepared for this Declaratory Ruling and Report and Order and is included in Appendix D.

B. Paperwork Reduction Act Analysis

18. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107- 198, see 44 U.S.C. § 3506(c)(4).

V. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-5, 7, 10, 201-05, 207-09, 214, 218-20, 225-27, 251-54, 256, 271, 303, 332, 403, 405, 502 and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-55, 157, 160, 201-05, 207-09, 214, 218-20, 225-27, 251-54, 256, 271, 303, 332, 403, 405, 502, and 503, and sections 1.1, 1.421 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.421, this Declaratory Ruling and Report and Order in CC Docket No. 01-92 IS ADOPTED, and that Part 20 of the Commission's Rules, 47 C.F.R. Part 20, IS AMENDED as set forth in Appendix A.

20. IT IS FURTHER ORDERED that the rule revisions adopted in this Declaratory Ruling and Report and Order SHALL BECOME EFFECTIVE thirty (30) days after publication in the Federal Register.

---

[63] *See* Appendix A.

[64] *See* 47 U.S.C. § 252(b)(1).

[65] *See* 47 C.F.R. § 51.715 (establishing interim transport and termination pricing upon request for an interconnection arrangement).

[66] *Local Competition First Report and Order*, 11 FCC Rcd at 16029-30, para. 1065 (finding that interim compensation was necessary to promote competition in the local exchange).

21. IT IS FURTHER ORDERED that the Petition for Declaratory Ruling filed by T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications and Nextel Partners is DENIED as set forth herein.

22. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Declaratory Ruling and Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

AMENDMENT TO THE CODE OF FEDERAL REGULATIONS

For the reasons discussed in the preamble, the Federal Communications Commission amends Part 20 of Title 47 of the Code of Federal Regulation as follows:

1. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 4, 10, 251-254, 303, and 332 of the Communications Act of 1934, as amended; 47 U.S.C. §§ 154, 160, 251-254, 303, and 332, unless otherwise noted.

2. Section 20.11 is amended by adding new paragraphs (e) and (f) to read as follows:

§ 20.11 Interconnection to facilities of local exchange carriers.

* * * * *

(e) Local exchange carriers may not impose compensation obligations for traffic not subject to access charges upon commercial mobile radio service providers pursuant to tariffs.

(f) An incumbent local exchange carrier may request interconnection from a commercial mobile radio service provider and invoke the negotiation and arbitration procedures contained in section 252 of the Act. A commercial mobile radio service provider receiving a request for interconnection must negotiate in good faith and must, if requested, submit to arbitration by the state commission. Once a request for interconnection is made, the interim transport and termination pricing described in § 51.715 shall apply.

APPENDIX B

INTERCARRIER COMPENSATION NPRM
CC DOCKET NO. 01-92

COMMENTS

ACS of Anchorage, Inc.
Ad Hoc Telecommunications Users Committee (Ad Hoc)
Alaska Telephone Association
Allegiance Telecom, Inc.
Allied Personal Communications Industry
ALLTEL Communications Inc.
America Online, Inc. (AOL)
AT&T Corp.
AT&T Wireless Services, Inc.
BellSouth Corp.
Cable & Wireless USA
Cablevision Lightpath, Inc.
California Public Utilities Commission (California Commission)
Cbeyond Communications
Cellular Telecommunications & Internet Association (CTIA)
CenturyTel, Inc.
Competitive Telecommunications Association (CompTel)
Florida Public Service Commission (Florida Commission)
Focal Communications Corp., Pac-West Telecomm, Inc., RCN Telecom Services, Inc., and US LEC Corp. (Focal *et al.*)
General Services Administration (GSA)
Global Crossing Ltd.
Global NAPs Inc.
Guyana Telephone & Telegraph Ltd.
GVNW Consulting, Inc.
Home Telephone Company, Inc.
ICORE Inc.
Illinois Commerce Commission (Illinois Commission)
Independent Telephone & Telecommunications Alliance
Information Technology Association of America
Iowa Utilities Board (Iowa Commission)
ITC's, Inc.
KMC Telecom, Inc.
Level 3 Communications
Maryland Office of the People's Counsel (MD-OPC)
Michigan Exchange Carriers Association, Inc. (MECA)
Mid Missouri Cellular
Minnesota Independent Coalition
Missouri Public Service Commission (Missouri Commission)
Missouri Small Telephone Company Group (MSTG)
Mpower Communications Corp.
National Association of Regulatory Utility Commissioners (NARUC)

National Association of State Utility Consumer Advocates (NASUCA)
National Exchange Carrier Association, Inc. (NECA)
National Telephone Cooperative Association (NTCA)
New York State Department of Public Service (New York Commission)
Nextel Communications, Inc.
North County Communications
National Rural Telecom Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies (NRTA/OPASTCO)
Office of the Public Utility Counsel of Texas (Texas Counsel)
Oklahoma Rural Telephone Coalition
Onvoy, Inc.
Parrish, Blessing & Associates
Personal Communications Industry Association (PCIA)
Public Service Commission of Wisconsin (Wisconsin Commission)
Public Utility Commission of Texas (Texas Commission)
Qwest Communications International Inc.
Regulatory Utility Commission of Alaska (Alaska Commission)
Ronan Telephone Company Consumer Advisory Committee (Ronan Advisory)
Ronan Telephone Company and Hot Springs (Ronan/Hot Springs)
Rural Independent Competitive Alliance (RICA)
Rural Telecommunications Group (RTG)
SBC Communications, Inc.
Singapore Telecommunications Limited
Sprint Corp.
Telecom Consulting Associates, Inc. (TCA)
Time Warner Telecom
Triton PCS License Company, LLC
United States Telecom Association (USTA)
United Utilities, Inc.
Verizon
Verizon Wireless
VoiceStream Wireless Corp.
Western Alliance
WorldCom, Inc.
Z-Tel Communications, Inc.

REPLIES

ACS of Anchorage, Inc.
Ad Hoc Telecommunications Users Committee
Advanced Paging, Inc., A.V. Lauttamus Communications, Inc., and NEP, LLC
Allegiance Telecom, Inc.
Alliance of Incumbent Rural Independent Telephone Companies and the Independent Alliance
Allied Personal Communications Industry Association of California
ALLTEL Communications, Inc.
Arch Wireless, Inc.
Association for Local Telecommunications Services (ALTS)
AT&T
AT&T Wireless Services, Inc.

BellSouth Corp.
Cable & Wireless USA
Cablevision Lightpath, Inc.
California Public Utilities Commission (California Commission)
Cellular Telecommunications & Internet Association (CTIA)
Cincinnati Bell Telephone
Cook Telecom, Inc.
District of Columbia Office of the People's Counsel (DC People's Counsel)
e.spire Communications, Inc. and KMC Telecom, Inc. (e.spire and KMC)
Focal Communications Corp., Pac-West Telecomm, Inc., RCN Telecom Services, Inc. and US LEC Corp. (Focal *et al.*)
General Services Administration (GSA)
Genuity Solutions, Inc.
Global NAPs, Inc.
GVNW Consulting, Inc.
Independent Telephone & Telecommunications Alliance
Information Technology Association of America
Leap Wireless International
Level 3 Communications, LLC
Maryland Office of People's Counsel (MD-OPC)
Midwest Wireless Communications LLC, Midwest Wireless Iowa LLC, and Midwest Wireless Wisconsin LLC (Midwest)
Missouri Independent Telephone Group (MITG)
Missouri Small Telephone Company Group (MSTG)
National Association of State Utility Consumer Advocates (NASUCA)
National Exchange Carrier Association, Inc. (NECA)
National Rural Telephone Association and Organization for the Promotion and Advancement of Small Telecommunications Companies (NRTA/OPASTCO)
National Telephone Cooperative Association (NTCA)
Network Services LLC
Nextel Communications, Inc.
North County Communications
Office of the Public Utility Counsel of Texas (Texas Counsel)
Personal Communications Industry Association (PCIA)
Qwest Communications International, Inc.
Ronan Telephone Company Consumer Advisory Committee (Ronan Advisory)
Rural Cellular Association
Rural Independent Competitive Alliance (RICA)
Rural Telecommunications Group (RTG)
SBC Communications, Inc.
Small Business Administration, Office of Advocacy (SBA)
Small Company Group of New York
Sprint Corp.
SureWest Communications
Taylor Communications Group, Inc.
Telecom Consulting Associates, Inc. (TCA)
Time Warner Telecom
Triton PCS License Company, LLC
United States Telecom Association (USTA)

Verizon
Verizon Wireless
VoiceStream Wireless Corp.
WebLink Wireless, Inc.
WorldCom, Inc.

APPENDIX C

T-MOBILE USA, WESTERN WIRELESS, NEXTEL COMMUNICATIONS AND NEXTEL PARTNERS PETITION CC DOCKET NO. 01-92

COMMENTS

Alliance of Incumbent Rural Independent Telephone Companies
AT&T Corp.
AT&T Wireless Services, Inc.
BellSouth Corp.
Cellular Telecommunication & Internet Association (CTIA)
Cingular Wireless LLC
Fred Williamson & Associates, Inc.
Frontier & Citizens Incumbent Local Exchange Carriers
ICORE, Inc.
John Staurulakis, Inc. (JSI)
Michigan Rural Incumbent Local Exchange Carriers
Minnesota Independent Coalition
Missouri Independent Telephone Company Group (MITG)
Missouri Small Telephone Company Group (MSTG)
Montana Local Exchange Carriers
National Telecommunications Cooperative Association (NTCA)
Nebraska Rural Independent Companies
Oklahoma Rural Telephone Companies
Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)
Qwest Communications International, Inc.
Rural Cellular Association and Rural Telecommunications Group
Rural Incumbent Local Exchange Carriers (Rural ILEC)
Rural Iowa Independent Telephone Association
SBC Communications, Inc.
South Dakota Telephone Assoc., et. al.
Sprint Corp.
Telecom Consulting Associates, Inc.
Triton PCS License Company, LLC
United States Cellular Corp.
United States Telecom Association (USTA)
Verizon Wireless
Warinner, Gesigner & Associates, LLC
Warinner, Gesigner & Associates on behalf of KLM Telephone Company, *et al.*

REPLIES

Alabama Rural Local Exchange Carriers
AT&T Corp.
AT&T Wireless Services, Inc.
Beacon Telecommunications Advisors, LLC
California RTCs
Cellular Telecommunication & Internet Association (CTIA)
Fred Williamson & Associates Inc.
GVNW Consulting, Inc.
Joint CMRS Petitioners
Minnesota Independent Coalition
Missouri Independent Telephone Company Group (MITG)
Missouri Small Telephone Company Group (MSTG)
Montana Local Exchange Carriers
National Exchange Carrier Association, Inc. (NECA)
Nebraska Rural Independent Companies
Oklahoma Rural Telephone Companies
Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)
Rural Carriers (TDS Telecommunications Corp. *et al.*)
SBC Communications, Inc.
Supra Telecommunications & Information Systems, Inc.
Triton PCS License Company, LLC
Verizon Wireless

APPENDIX D

FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[67] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Intercarrier Compensation NPRM* in CC Docket No. 01-92.[68] The Commission sought written public comment on the proposals in the *Intercarrier Compensation NPRM*, including comment on the issues raised in the IRFA.[69] Relevant comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[70] To the extent that any statement in this FRFA is perceived as creating ambiguity with respect to Commission rules or statements made in the sections of the order preceding the FRFA, the rules and statements set forth in those preceding sections are controlling.

A. Need for, and Objectives of, the Rules

2. In the *Intercarrier Compensation NPRM*, the Commission acknowledged a number of problems with the current intercarrier compensation regimes (access charges and reciprocal compensation) and discussed a number of areas where a new approach might be adopted.[71] Among other issues, the Commission asked commenters to address the appropriate regulatory framework governing interconnection, including compensation arrangements, between LECs and CMRS providers.[72] Subsequently, the Commission received a petition for declaratory ruling filed by CMRS providers (T-Mobile Petition) asking the Commission to find that state wireless termination tariffs are not the proper mechanism for establishing reciprocal compensation arrangements between incumbent LECs and CMRS providers.[73] The T-Mobile Petition was incorporated into the Commission's intercarrier compensation rulemaking proceeding, along with the comments, replies, and *ex partes* filed in response to the petition.[74]

3. In this Declaratory Ruling and Report and Order (Order), the Commission denies the T-Mobile Petition because neither the Act nor the existing rules preclude an incumbent LEC's use of tariffed compensation arrangements in the absence of an interconnection agreement or a competitive carrier's request to enter into one. On a prospective basis, however, the Commission amends its rules to prohibit the use of tariffs to impose compensation obligations with respect to non-access CMRS traffic

---

[67] 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[68] *See Intercarrier Compensation NPRM*, 16 FCC Rcd. at 9657-73, paras. 131-81.

[69] *Id.* at 9657, para. 131.

[70] *See* 5 U.S.C. § 604.

[71] *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9612, para. 2.

[72] *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9642, paras. 89-90.

[73] T-Mobile Petition at 1.

[74] *See Comment Sought on Petitions for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic*, CC Docket No. 01-92, Public Notice, 17 FCC Rcd 19046 (2002).

and to clarify that an incumbent LEC may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act, and that during the period of negotiation and arbitration, the parties will be entitled to compensation in accordance with the interim rate provisions set forth in section 51.715 of the Commission's rules.[75] By clarifying these interconnection and compensation obligations, the Commission will resolve a significant carrier dispute pending in the marketplace that has provoked a substantial and increasing amount of litigation, and will facilitate the exchange of traffic between wireline LECs and CMRS providers and encourage the establishment of interconnection and compensation terms through the negotiation and arbitration processes contemplated by the 1996 Act.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. In the IRFA, the Commission noted the numerous problems that had developed under the existing rules governing intercarrier compensation, and it sought comment on whether proposed new approaches would encourage efficient use of, and investment in the telecommunications network, and whether the transition would be administratively feasible.[76] In response to the *Intercarrier Compensation NPRM*, the Commission received 75 comments, 62 replies, and numerous *ex parte* submissions. In addition, a number of additional comments, replies, and *ex partes* were submitted in this proceeding in connection with the T-Mobile petition. Those comments expressly addressed to the IRFA raised concerns regarding the more comprehensive reform proposals discussed in the *Intercarrier Compensation NPRM* rather than the more narrow LEC-CMRS issues addressed in this Order.[77]

5. In connection with the issues we address here, several parties commenting on the T-Mobile Petition expressed concern that striking down tariffs would impose a burden on rural incumbent LECs. They argued that LECs lacked the ability under the law to obtain a compensation agreement with CMRS providers without the inducement to negotiate provided by tariffs, and further asserted that small carriers would be adversely impacted by any obligation to terminate CMRS traffic without compensation.[78] Conversely, some carriers expressed a concern that the negotiation and arbitration process was an inefficient method of establishing a compensation arrangement between two carriers where the traffic volume between them was small, and argued that non-negotiated arrangements were therefore a better method of imposing compensation obligations.[79] We address these issues in section E

---

[75] *See supra* para. 16.

[76] *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9658, paras 134-35.

[77] *See, e.g.*, SBA Reply at 12-14.

[78] *See, e.g.*, ICORE T-Mobile Comments at 7; Michigan ILECs T-Mobile Comments at 3; Montana LECs T-Mobile Comments at 3; NTCA T-Mobile Comments at 3; Rural ILECs T-Mobile Comments at 7-8; TCA T-Mobile Comments at 4.

[79] *See, e.g.*, AT&T Wireless T-Mobile Comments at 3; Triton PCS T-Mobile Comments at 6-7. While most carriers raising this concern have been CMRS providers, some small LECs have also asserted that negotiations are not an efficient method of establishing terms given the amount of traffic at issue. *See* Montana LECs T-Mobile Comments at 6; TCA T-Mobile Comments at 2. *But see, e.g.*, Rural ILECs T-Mobile Comments at 7 (asserting that volume of traffic is significant in proportion to the total traffic for small incumbent LECs); Frontier & Citizens T-Mobile Comments at 4 (amount of CMRS-to-rural incumbent LEC traffic is significant and growing).

of the FRFA.[80]

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules will Apply

6. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by rules adopted herein.[81] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[82] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[83] A "small business concern" is one that: 1) is independently owned and operated; 2) is not dominant in its field of operation; and 3) satisfies any additional criteria established by the Small Business Administration (SBA).[84]

7. In this section, we further describe and estimate the number of small entity licensees and regulatees that may also be indirectly affected by rules adopted pursuant to this *Order*. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report.[85] The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers,[86] Paging,[87] and Cellular and Other Wireless Telecommunications.[88] Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

8. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in

---

[80] *See infra* paras. 20-21.

[81] 5 U.S.C. §§ 604(a)(3).

[82] 5 U.S.C. § 601(6).

[83] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[84] 15 U.S.C. § 632.

[85] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, Table 5.3, page 5-5 (May 2004) (*Trends in Telephone Service*). This source uses data that are current as of October 22, 2003.

[86] 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110.

[87] *Id.* § 121.201, NAICS code 517211.

[88] *Id.* § 121.201, NAICS code 517212.

its field of operation."[89] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[90] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

9. *Wired Telecommunications Carriers*. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[91] According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.[92] Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.[93] Thus, under this size standard, the majority of firms can be considered small.

10. *Local Exchange Carriers*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[94] According to Commission data, 1,310 carriers reported that they were incumbent local exchange service providers.[95] Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees.[96] In addition, according to Commission data, 563 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services.[97] Of these 563 companies, an estimated 472 have 1,500 or fewer employees and 91 have more than 1,500 employees.[98] In addition, 37 carriers reported that they were "Other Local Exchange Carriers."[99] Of the 37 "Other

---

[89] 15 U.S.C. § 632.

[90] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

[91] 13 C.F.R. § 121.201, NAICS code 517110.

[92] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517110.

[93] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[94] 13 C.F.R. § 121.201, NAICS code 517110.

[95] *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Table 5.3 (May 2004) (*Trends in Telephone Service*).

[96] *Trends in Telephone Service*, Table 5.3.

[97] *Trends in Telephone Service*, Table 5.3.

[98] *Trends in Telephone Service*, Table 5.3.

[99] *Trends in Telephone Service*, Table 5.3.

Local Exchange Carriers," an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees.[100] Consequently, the Commission estimates that most providers of local exchange service, competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

11. *Incumbent Local Exchange Carriers (LECs).* We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operations."[101] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.[102] We therefore include small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

12. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[103] According to Commission data,[104] 1,337 carriers reported that they were engaged in the provision of local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

13. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), and "Other Local Exchange Carriers."* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers," all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[105] According to Commission data,[106] 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services.

---

[100] *Trends in Telephone Service*, Table 5.3.

[101] 15 U.S.C. § 632.

[102] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBC regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

[103] 13 C.F.R. § 121.201, NAICS code 517110.

[104] *Trends in Telephone Service* at Table 5.3.

[105] 13 C.F.R. § 121.201, NAICS code 517110.

[106] *Trends in Telephone Service* at Table 5.3.

Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees.[107] In addition, 35 carriers reported that they were "Other Local Service Providers." Of the 35 "Other Local Service Providers," an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees.[108] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

14. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging"[109] and "Cellular and Other Wireless Telecommunications."[110] Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[111] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[112] Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[113] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[114] Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

15. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services.[115] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[116] According to the most

[107] *Id.*

[108] *Id.*

[109] 13 C.F.R. § 121.201, NAICS code 517211.

[110] 13 C.F.R. § 121.201, NAICS code 517212.

[111] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

[112] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

[113] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

[114] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

[115] 13 C.F.R. § 121.201, NAICS code 517212.

[116] 13 C.F.R. § 121.201, NAICS code 517212.

recent *Trends in Telephone Service* data, 447 carriers reported that they were engaged in the provision of wireless telephony.[117] We have estimated that 245 of these are small under the SBA small business size standard.

16. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category "Cellular and Other Wireless Telecommunications."[118] Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[119] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[120] Thus, under this category and size standard, the great majority of firms can be considered small. According to the most recent *Trends in Telephone Service* data, 447 carriers reported that they were engaged in the provision of cellular service, personal communications service, or specialized mobile radio telephony services, which are placed together in the data.[121] We have estimated that 245 of these are small, under the SBA small business size standard.[122]

D. Description of Projected Reporting, Record Keeping and Other Compliance Requirements for Small Entities

17. In this Order, the Commission adopts new rules that prohibit incumbent LECs from imposing non-access compensation obligations pursuant to tariff, and permit LECs to compel interconnection and arbitration with CMRS providers.[123] Under the new rules, CMRS providers and LECs, including small entities, must engage in interconnection agreement negotiations and, if requested, arbitrations in order to impose compensation obligations for non-access traffic.[124] The record suggests that many incumbent LECs and CMRS providers, including many small and rural carriers, already participate in interconnection negotiations and the state arbitration process under the current rules. For these carriers, our new rules will not result in any additional compliance requirements. For LECs that

---

[117]FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5-5 (May 2004). This source uses data that are current as of October 22, 2003.

[118]13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[119]U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

[120]U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

[121]FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5-5 (May 2004). This source uses data that are current as of October 22, 2003.

[122]FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5-5 (May 2004). This source uses data that are current as of October 22, 2003.

[123]*See supra* paras. 14-16.

[124]*See supra* para. 14 (prohibiting the use of tariffs to impose non-access compensation obligations).

have imposed compensation obligations for non-access traffic pursuant to state tariffs, however, the amended rules require that these LECs, including small entities, participate in interconnection negotiations and, if requested, the state arbitration process in order to impose compensation obligations. Conversely, the new rules obligate CMRS providers, including small entities, to participate in a negotiation and arbitration process upon a request by incumbent LECs.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

18. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; 2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; 3) the use of performance rather than design standards; and 4) an exemption from coverage of the rule, or any part thereof, for small entities."[125]

19. The Commission denies a petition for declaratory ruling filed by CMRS providers asking the Commission to find that state wireless termination tariffs are not the proper mechanism for establishing reciprocal compensation arrangements between LECs and CMRS providers.[126] The Commission considered and rejected a finding that state wireless termination tariffs are not the proper mechanism for establishing reciprocal compensation arrangements between LECs and CMRS providers because the current rules do not explicitly preclude such arrangements and these tariffs ensure compensation where the rights of incumbent LECs to compel negotiations with CMRS providers are unclear.[127] On a prospective basis, however, the Commission amends its rule to prohibit the use of tariffs to impose compensation obligations with respect to non-access CMRS traffic and to clarify that an incumbent LEC may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act.[128]

20. As a general matter, our actions in this Order should benefit all interconnected LECs and CMRS providers, including small entities, by facilitating the exchange of traffic and providing greater regulatory certainty and reduced litigation costs. Further, we directly address the concern of small incumbent LECs that they would be unable to obtain a compensation arrangement without tariffs by providing them with a new right to initiate a section 252 process through which they can obtain a reciprocal compensation arrangement with any CMRS provider.

21. The Commission considered and rejected the possibility of permitting wireless termination tariffs on a prospective basis.[129] Although establishing contractual arrangements may impose

[125] 5 U.S.C. § 603(c)(1)-(c)(4).

[126] T-Mobile Petition at 1.

[127] *See supra* paras. 9-12.

[128] *See supra* paras. 14-16. *See also Intercarrier Compensation NPRM*, 16 FCC Rcd at 9641-42, paras. 86, 89-90 (requesting comment on how interconnection between LECs and CMRS providers would "work" within the existing regulatory frameworks under sections 251 and 252 and section 332 of the Act).

[129] *See supra* para. 14.

burdens on CMRS providers and LECs, including some small entities, that do not have these arrangements in place, we find that our approach in the Order best balances the needs of incumbent LECs to obtain terminating compensation for wireless traffic and the pro-competitive process and policies reflected in the 1996 Act.[130] We also note that, during this proceeding, both CMRS providers and rural incumbent LECs have repeatedly emphasized their willingness to engage in a negotiation and arbitration process to establish compensation terms. In the Further Notice of Proposed Rulemaking adopted by the Commission on February 10, 2005, we seek further comment on ways to reduce the burdens of such a process.[131]

F. Report to Congress

22. The Commission will send a copy of the Declaratory Ruling and Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Declaratory Ruling and Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Declaratory Ruling and Report and Order, including this FRFA - or summaries thereof - will be published in the Federal Register.

[130] In particular, because a LEC may trigger the interim compensation requirements in section 51.715 of the Commission's rules, 47 C.F.R. § 51.715, simply by requesting interconnection with a CMRS provider, the threshold burden to obtain compensation under the amended rule is minimal.

[131] *See FCC Moves to Replace Outmoded Rules Governing Intercarrier Compensation*, CC Docket No. 01-92, News (rel. Feb. 10, 2005).

Verizon has not shown evidence of any abuse here.[979] According to Cox, this arbitration is not the appropriate forum to evaluate compliance with such regulatory requirements.[980]

299. Verizon argues that the petitioners are effectively trying to thwart Verizon's access regime by treating toll traffic as "local" traffic.[981] Verizon asserts that the *ISP Intercarrier Compensation Order* supports its position that a call's jurisdiction is based on its end points.[982] Accordingly, Verizon argues, there is no difference between a virtual FX call and a toll call.[983] In contrast to virtual FX, Verizon asserts that its traditional FX service is an alternative pricing structure for toll service, rather than a "local" service as claimed by the petitioners.[984] Verizon argues that the petitioners should assume financial responsibility for virtual FX traffic by paying Verizon for transport from the calling area of the Verizon caller to the petitioner's POI.[985]

300. Verizon acknowledges that virtual FX traffic cannot be distinguished from "local" traffic at Verizon's end office switches.[986] Verizon proposes, however, that the petitioners conduct a traffic study or develop a factor to identify the percentage of virtual FX traffic.[987] Verizon would then exchange the identified proportion of traffic either pursuant to the governing access tariff or on a bill and keep basis under its VGRIP proposal.[988] Finally, Verizon notes that several state commissions, including Maine, Connecticut, Missouri, Texas and Georgia, have found that virtual FX traffic is not subject to reciprocal compensation.[989]

c. Discussion

301. We agree with the petitioners that Verizon has offered no viable alternative to the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes. We therefore accept the petitioners' proposed language and reject Verizon's

---

[979] *Id.* at 40.

[980] *Id.*

[981] Verizon IC Brief at 16.

[982] *Id.*, citing *ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9159-60, 9163, paras. 14, 25.

[983] *Id.* at 17.

[984] *Id.* at 18.

[985] Verizon IC Reply at 11.

[986] Verizon IC Brief at 19.

[987] *Id.* at 19.

[988] *Id.*

[989] *Id.* at 19-21.

language that would rate calls according to their geographical end points.[990] Verizon concedes that NPA-NXX rating is the established compensation mechanism not only for itself, but industry-wide.[991] The parties all agree that rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete, workable solutions at this time.[992]

302. Verizon proposed, late in this proceeding, that the petitioners should conduct a traffic study to develop a factor to account for the virtual FX traffic that appears to be "local" traffic. However, Verizon's contract fails to lay out such a mechanism in any detail. Most importantly, Verizon concedes that currently there is no way to determine the physical end points of a communication, and offers no specific contract proposal to make that determination.[993]

303. Additionally, we note that state commissions, through their numbering authority, can correct abuses of NPA-NXX allocations. As discussed earlier, the Maine Commission found that a competitive LEC there was receiving NPA-NXXs for legacy rate centers throughout the state of Maine although it served no customers in most of those rate centers.[994] To the extent that Verizon sees equivalent abuses in Virginia, it can petition the Virginia Commission to review a competitive LEC's NPA-NXX allocations.

3. Issue III-5 (Tandem Switching Rate)

a. Introduction

304. In the *Local Competition First Report and Order*, the Commission found that the costs of transport and termination are likely to vary depending on whether traffic is routed through a tandem switch or routed directly to an end-office switch.[995] It concluded, therefore,

---

[990] Thus, we adopt WorldCom's November Proposed Agreement to Verizon, Attachment I, § 4.2.1.2 (subject to modifications accomplished below in connection with Issue IV-35); Cox's November Proposed Agreement to Verizon, §§ 5.7.1 and 5.7.4; and AT&T's November Proposed Agreement to Verizon, § 1.51. We have previously rejected the proposals that Verizon offers to AT&T with respect to this issue. *See supra* Issues I-1 and VII-4 (rejecting , Verizon's November Proposed Agreement to AT&T, § 5.7.3); Issue I-5, subsection (d) (rejecting Verizon's November Proposed Agreement to AT&T, §1.68a). We reject Verizon's November Proposed Agreement to WorldCom, Part B, § 2.81; we have previously rejected Verizon's Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.2. *See supra* Issue I-2. We reject the last sentence of Verizon's November Proposed Agreement to Cox, § 5.7.1; we have previously rejected Verizon's November Proposed Agreement to Cox, § 1.60a. *See supra* Issue I-5.

[991] *See* Tr. at 1889-1900.

[992] *See* AT&T Brief at 95; WorldCom Brief at 84; Cox Brief at 39; Tr. at 1812-13.

[993] *See* Tr. at 1812-13.

[994] *See Investigation Into Use of Central Office Codes (NXXs) by New England Fiber Communications, Inc., LLC d/b/a/ Brooks Fiber*, Docket No. 98-78, Maine PUC (rel. June 30, 2000).

[995] *Local Competition First Report and Order*, 11 FCC Rcd at 16042, para. 1090.

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

PART II--DEVELOPMENT OF COMPETITIVE MARKETS

SEC. 251. [47 U.S.C. 251] INTERCONNECTION.

(a) GENERAL DUTY OF TELECOMMUNICATIONS CARRIERS.--Each telecommunications carrier has the duty--

(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and

(2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256.

(b) OBLIGATIONS OF ALL LOCAL EXCHANGE CARRIERS.--Each local exchange carrier has the following duties:

(1) RESALE.--The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

(2) NUMBER PORTABILITY.--The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

(3) DIALING PARITY.--The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

(4) ACCESS TO RIGHTS-OF-WAY.--The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224.

(5) RECIPROCAL COMPENSATION.--The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

(c) ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS.--In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

(1) DUTY TO NEGOTIATE.--The duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection. The requesting telecommunications

carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

(2) INTERCONNECTION.--The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

(3) UNBUNDLED ACCESS.--The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

(4) RESALE.--The duty--

(A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and

(B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

(5) NOTICE OF CHANGES.--The duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of

those facilities and networks.

(6) COLLOCATION.--The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

(d) IMPLEMENTATION.--

(1) IN GENERAL.--Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete all actions necessary to establish regulations to implement the requirements of this section.

(2) ACCESS STANDARDS.--In determining what network elements should be made available for purposes of subsection (c)(3), the Commission shall consider, at a minimum, whether--

(A) access to such network elements as are proprietary in nature is necessary; and

(B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

(3) PRESERVATION OF STATE ACCESS REGULATIONS.--In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that--

(A) establishes access and interconnection obligations of local exchange carriers;

(B) is consistent with the requirements of this section; and

(C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

(e) NUMBERING ADMINISTRATION.--

(1) COMMISSION AUTHORITY AND JURISDICTION.--The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

(2) COSTS.--The cost of establishing telecommunications numbering administration arrangements and number portability shall be

borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.

(f) EXEMPTIONS, SUSPENSIONS, AND MODIFICATIONS.--

(1) EXEMPTION FOR CERTAIN RURAL TELEPHONE COMPANIES.--

(A) EXEMPTION.--Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

(B) STATE TERMINATION OF EXEMPTION AND IMPLEMENTATION SCHEDULE.--The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the State commission. The State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption under subparagraph (A). Within 120 days after the State commission receives notice of the request, the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof). Upon termination of the exemption, a State commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with Commission regulations.

(C) LIMITATION ON EXEMPTION.--The exemption provided by this paragraph shall not apply with respect to a request under subsection (c) from a cable operator providing video programming, and seeking to provide any telecommunications service, in the area in which the rural telephone company provides video programming. The limitation contained in this subparagraph shall not apply to a rural telephone company that is providing video programming on the date of enactment of the Telecommunications Act of 1996.

(2) SUSPENSIONS AND MODIFICATIONS FOR RURAL CARRIERS.--A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification--

(A) is necessary--

(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

(ii) to avoid imposing a requirement that is unduly economically burdensome; or

(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

(g) CONTINUED ENFORCEMENT OF EXCHANGE ACCESS AND INTERCONNECTION REQUIREMENTS.--On and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment. During the period beginning on such date of enactment and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

(h) DEFINITION OF INCUMBENT LOCAL EXCHANGE CARRIER.--

(1) DEFINITION.--For purposes of this section, the term "incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that--

(A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and

(B)(i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or

(ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i).

(2) TREATMENT OF COMPARABLE CARRIERS AS INCUMBENTS.--The

Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if--

(A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1);

(B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and

(C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section.

(i) SAVINGS PROVISION.--Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201.

SEC. 252. [47 U.S.C. 252] PROCEDURES FOR NEGOTIATION, ARBITRATION, AND APPROVAL OF AGREEMENTS.

(a) AGREEMENTS ARRIVED AT THROUGH NEGOTIATION.--

(1) VOLUNTARY NEGOTIATIONS.--Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section.

(2) MEDIATION.--Any party negotiating an agreement under this section may, at any point in the negotiation, ask a State commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation.

(b) AGREEMENTS ARRIVED AT THROUGH COMPULSORY ARBITRATION.--

(1) ARBITRATION.--During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

(2) DUTY OF PETITIONER.--

(A) A party that petitions a State commission under paragraph (1) shall, at the same time as it submits the petition, provide the State commission all relevant documentation concerning--

(i) the unresolved issues;

(ii) the position of each of the parties with respect to those issues; and

(iii) any other issue discussed and resolved by the parties.

(B) A party petitioning a State commission under paragraph (1) shall provide a copy of the petition and any documentation to the other party or parties not later than the day on which the State commission receives the petition.

(3) OPPORTUNITY TO RESPOND.--A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the State commission receives the petition.

(4) ACTION BY STATE COMMISSION.--

(A) The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3).

(B) The State commission may require the petitioning party and the responding party to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived.

(C) The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

(5) REFUSAL TO NEGOTIATE.--The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

(c) STANDARDS FOR ARBITRATION.--In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall--

(1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the

Commission pursuant to section 251;

(2) establish any rates for interconnection, services, or network elements according to subsection (d); and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

(d) PRICING STANDARDS.--

(1) INTERCONNECTION AND NETWORK ELEMENT CHARGES.--Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section--

(A) shall be--

(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and

(ii) nondiscriminatory, and

(B) may include a reasonable profit.

(2) CHARGES FOR TRANSPORT AND TERMINATION OF TRAFFIC.--

(A) IN GENERAL.--For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless--

(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and

(ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

(B) RULES OF CONSTRUCTION.--This paragraph shall not be construed--

(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

(ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such

calls.

(3) WHOLESALE PRICES FOR TELECOMMUNICATIONS SERVICES.--For the purposes of section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

(e) APPROVAL BY STATE COMMISSION.--

(1) APPROVAL REQUIRED.--Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) GROUNDS FOR REJECTION.--The State commission may only reject--

(A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that--

(i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or

(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section.

(3) PRESERVATION OF AUTHORITY.--Notwithstanding paragraph (2), but subject to section 253, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

(4) SCHEDULE FOR DECISION.--If the State commission does not act to approve or reject the agreement within 90 days after submission by the parties of an agreement adopted by negotiation under subsection (a), or within 30 days after submission by the parties of an agreement adopted by arbitration under subsection (b), the agreement shall be deemed approved. No State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section.

(5) COMMISSION TO ACT IF STATE WILL NOT ACT.--If a State commission fails to act to carry out its responsibility under this section in

any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission.

(6) REVIEW OF STATE COMMISSION ACTIONS.--In a case in which a State fails to act as described in paragraph (5), the proceeding by the Commission under such paragraph and any judicial review of the Commission's actions shall be the exclusive remedies for a State commission's failure to act. In any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 and this section.

(f) STATEMENTS OF GENERALLY AVAILABLE TERMS.--

(1) IN GENERAL.--A Bell operating company may prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State to comply with the requirements of section 251 and the regulations thereunder and the standards applicable under this section.

(2) STATE COMMISSION REVIEW.--A State commission may not approve such statement unless such statement complies with subsection (d) of this section and section 251 and the regulations thereunder. Except as provided in section 253, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such statement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

(3) SCHEDULE FOR REVIEW.--The State commission to which a statement is submitted shall, not later than 60 days after the date of such submission--

(A) complete the review of such statement under paragraph (2) (including any reconsideration thereof), unless the submitting carrier agrees to an extension of the period for such review; or

(B) permit such statement to take effect.

(4) AUTHORITY TO CONTINUE REVIEW.--Paragraph (3) shall not preclude the State commission from continuing to review a statement that has been permitted to take effect under subparagraph (B) of such paragraph or from approving or disapproving such statement under paragraph (2).

(5) DUTY TO NEGOTIATE NOT AFFECTED.--The submission or approval of a statement under this subsection shall not relieve a Bell

operating company of its duty to negotiate the terms and conditions of an agreement under section 251.

(g) CONSOLIDATION OF STATE PROCEEDINGS.--Where not inconsistent with the requirements of this Act, a State commission may, to the extent practical, consolidate proceedings under sections 214(e), 251(f), 253, and this section in order to reduce administrative burdens on telecommunications carriers, other parties to the proceedings, and the State commission in carrying out its responsibilities under this Act.

(h) FILING REQUIRED.--A State commission shall make a copy of each agreement approved under subsection (e) and each statement approved under subsection (f) available for public inspection and copying within 10 days after the agreement or statement is approved. The State commission may charge a reasonable and nondiscriminatory fee to the parties to the agreement or to the party filing the statement to cover the costs of approving and filing such agreement or statement.

(i) AVAILABILITY TO OTHER TELECOMMUNICATIONS CARRIERS.--A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

(j) DEFINITION OF INCUMBENT LOCAL EXCHANGE CARRIER.--For purposes of this section, the term "incumbent local exchange carrier" has the meaning provided in section 251(h).

SEC. 253. [47 U.S.C. 253] REMOVAL OF BARRIERS TO ENTRY.

(a) IN GENERAL.--No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

(b) STATE REGULATORY AUTHORITY.--Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

(c) STATE AND LOCAL GOVERNMENT AUTHORITY.--Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

(d) PREEMPTION.--If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or

[Code of Federal Regulations]

[Title 47, Volume 2]

[Revised as of October 1, 2005]

From the U.S. Government Printing Office via GPO Access

[CITE: 47CFR20.11]

TITLE 47--TELECOMMUNICATION

COMMISSION (CONTINUED)

PART 20_COMMERCIAL MOBILE RADIO SERVICES--Table of Contents

Sec. 20.11 Interconnection to facilities of local exchange carriers.

(a) A local exchange carrier must provide the type of interconnection reasonably requested by a mobile service licensee or carrier, within a reasonable time after the request, unless such interconnection is not technically feasible or economically reasonable. Complaints against carriers under section 208 of the Communications Act, 47 U.S.C. 208, alleging a violation of this section shall follow the requirements of Sec. Sec. 1.711-1.734 of this chapter, 47 CFR 1.711-1.734.

(b) Local exchange carriers and commercial mobile radio service providers shall comply with principles of mutual compensation.

(1) A local exchange carrier shall pay reasonable compensation to a commercial mobile radio service provider in connection with terminating traffic that originates on facilities of the local exchange carrier.

(2) A commercial mobile radio service provider shall pay reasonable

compensation to a local exchange carrier in connection with terminating traffic that originates on the facilities of the commercial mobile radio service provider.

(c) Local exchange carriers and commercial mobile radio service providers shall also comply with applicable provisions of part 51 of this chapter.

(d) Local exchange carriers may not impose compensation obligations for traffic not subject to access charges upon commercial mobile radio service providers pursuant to tariffs.

(e) An incumbent local exchange carrier may request interconnection from a commercial mobile radio service provider and invoke the negotiation and arbitration procedures contained in section 252 of the Act. A commercial

[[Page 13]]

mobile radio service provider receiving a request for interconnection must negotiate in good faith and must, if requested, submit to arbitration by the state commission. Once a request for interconnection is made, the interim transport and termination pricing described in Sec. 51.715 of this chapter shall apply.

[59 FR 18495, Apr. 19, 1994, as amended at 61 FR 45619, Aug. 29, 1996; 70 FR 16145, Mar. 30, 2005]

[Code of Federal Regulations]
[Title 47, Volume 3]
[Revised as of October 1, 2005]
From the U.S. Government Printing Office via GPO Access
[CITE: 47CFR51.701]

[Page 65]

TITLE 47--TELECOMMUNICATION

CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION (CONTINUED)

PART 51_INTERCONNECTION--Table of Contents

Subpart H_Reciprocal Compensation for Transport and Termination of Telecommunications Traffic

Editorial Note: Nomenclature changes to subpart H appear at 66 FR 26806, May 15, 2001.

(a) The provisions of this subpart apply to reciprocal compensation for transport and termination of telecommunications traffic between LECs and other telecommunications carriers.

(b) Telecommunications traffic. For purposes of this subpart, telecommunications traffic means:

(1) Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access (see FCC 01-131, paragraphs 34, 36, 39, 42-43); or

(2) Telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in Sec. 24.202(a) of this chapter.

(c) Transport. For purposes of this subpart, transport is the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.

(d) Termination. For purposes of this subpart, termination is the switching of telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises.

(e) Reciprocal compensation. For purposes of this subpart, a reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier.

[61 FR 45619, Aug. 29, 1996, as amended at 66 FR 26806, May 15, 2001]

[Code of Federal Regulations]
[Title 47, Volume 3]
[Revised as of October 1, 2005]
From the U.S. Government Printing Office via GPO Access
[CITE: 47CFR51.703]

TITLE 47--TELECOMMUNICATION

CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION (CONTINUED)

PART 51_INTERCONNECTION--Table of Contents

Subpart H_Reciprocal Compensation for Transport and Termination of Telecommunications Traffic

Sec. 51.703 Reciprocal compensation obligation of LECs.

(a) Each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier.

(b) A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.

Issued: 10-7-03

Effective: 12-2-03
Per Decision No. 66597

5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATION SERVICE - COIN AND COINLESS
5.5.7 PUBLIC ACCESS LINE SERVICE

D. Rates and Charges (Cont'd)

5. Usage Rates

(D)

	RATE PER MINUTE	(C)
• Measured Usage Rate	$0.01 (R)	(C)

	RATE PER CALL
• Message Usage Rate	$0.03 (R)

6. The following nonrecurring charge for changes applies:

- To each line when changing from one PAL line to another;
- To telephone number changes, at customer's request;
- For temporary transfer of calls, at customer's request.

	NONRECURRING CHARGE
• Per activity, per CO access line changed	$27.50

16. FACILITIES FOR RADIO CARRIERS (N)

16. FACILITIES FOR RADIO CARRIERS (N)

16.3 WIDE AREA CALLING SERVICE

A. Description

Wide Area Calling Service is a billing service offered to Paging Service Carriers, in conjunction with their Type 2 Interconnection. Wide Area Calling Service provides direct dialed LATA-wide toll free calling for Qwest Corporation land to mobile (paging) calls. The Type 2 Interconnection provides for the completion of the land to mobile (paging) calls and for the billing of the calls to the Carrier rather than the calling party.

B. Terms and Conditions

1. The Carrier must subscribe to Type 2 Interconnection and must follow all of the configuration requirements of the Type 2 Interconnection.

2. A dedicated NXX(s) is required for Wide Area Calling. The Carrier may have multiple Wide Area Calling NXXs in a LATA, but each NXX may only be used in one LATA. It is the Carrier's responsibility to obtain the dedicated NXX(s) from the North American Numbering Plan Administration (NANPA).

3. The Company performs recording and rating of all Wide Area Calling Service calls.

4. Wide Area Calling Service has two pricing options. Option 1 covers minute of use billing of only those calls which would otherwise be considered toll, originating outside of the local calling area for the Wide Area Calling Service prefix, but within the same LATA. Option 2 covers minute of use billing for both local and toll equivalent calls to a Wide Area Calling Service prefix. Only one option may be selected per customer, per LATA.

5. Wide Area Calling Service rates do not apply to calls originating from ILECs or outbound WATS lines or any non-direct dialed IntraLATA toll call.

6. Calls originating from PALs within the same LATA of the Wide Area Calling Service and within the Company's serving area are applicable to Wide Area Calling Service. The calling party would be charged the current PAL pay telephone charge to access the network, but would not pay any long distance charges. The Carrier will be charged WAC usage rates for PAL originated calls. In the event actual usage cannot be billed, the WAC NXX flat monthly usage rate will be applicable.

16. FACILITIES FOR RADIO CARRIERS (N)

16.3 WIDE AREA CALLING SERVICE

B. Terms and Conditions (Cont'd)

7. The service establishment interval is per industry standards (105 days), in the case of a new prefix or an existing prefix which is being relocated in addition to being converted to Wide Area Calling. The service establishment interval is 90 days in the case of an existing prefix that is not being relocated in the process of being converted to Wide Area Calling.

8. The service removal interval is 60 days, in the case of a Wide Area Calling prefix being converted to a regular wireless prefix, without being relocated during the process. The service removal interval is per industry standards (105 days), in the case of a Wide Area Calling prefix being entirely eliminated or being relocated in the process of removing the Wide Area Calling service.

9. Calls will be billed in actual seconds, however, the minimum billed will be 20 seconds.

16. FACILITIES FOR RADIO CARRIERS (N)

16.3 WIDE AREA CALLING SERVICE (CONT'D)

C. Rates and Charges

Rates and charges for the underlying Type 2 Interconnection arrangement are in addition to the rates and charges listed below.

	USOC	NONRECURRING CHARGE
• Service Establishment - per LATA		
- 1st Dedicated NXX	VOVWA	$8,700.00
- Subsequent NXX, each	VOVWA	5,000.00

	RATE PER MINUTE
• Pricing Option 1 - toll equivalent calls[1]	
- Local switching	$0.0536
- Local transport	0.0364
• Pricing Option 2 - local and toll equivalent calls[1]	
- Local switching	0.0214
- Local transport	0.0086

	USOC	MONTHLY FLAT USAGE RATE
• Per Wide Area Calling NXX, applicable only when PAL originated usage cannot be billed	MA5CX	$23.32

[1] Local and toll equivalent calls are determined by the V&H of the originating end office and the V&H of the serving wire center of the Carrier's Point of Connection.